(16,144.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 854.

DANIEL WILEY, PLAINTIFF IN ERROR,

vs.

D. L. SINKLER, T. D. LANIGAN, AND BENJAMIN ELFE.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., FEBRUARY 13, 1896.

1 *Caption.*

At a circuit court of the United States for the fourth circuit, in and for the district of South Carolina, begun and holden at Columbia, in the district aforesaid, on the fourth Monday in November, 1895, before the Honorable Charles H. Simonton, circuit judge of the United States for the fourth judicial circuit, holding the said circuit court according to the form of the act of Congress in said cases made and provided, the following proceedings were had:

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

Be it remembered that heretofore, to wit, on the eleventh day of March, 1895, the said plaintiff, by his attorneys, Messrs. Obear and Douglass, *and* filed the following complaint; which complaint is in the words and tenor following:

2 *Complaint.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

The plaintiff above named complains of the above-named defendants, and alleges:

I. That the plaintiff is and was on the 6th day of November, 1894, a resident of the city and county of Charleston, in the State of South Carolina, and that he had been a resident of said State for a period of more than twelve months next preceding said 6th day of November, 1894, and a resident of said city and county for more than sixty days next preceding said day, and that under the constitution and laws of the said State of South Carolina and the Constitution and laws of the United States the said plaintiff is and was at the time aforesaid twenty-one years of age, and is and was in every other respect a duly qualified elector of said State, and is and was on the said 6th day of November, 1894, entitled to vote for a member of the House of Representatives of the United States from said State of South Carolina.

II. That the defendants were on the day and year aforesaid the board of managers of the Federal election at the First election
3 precinct in the Sixth ward of said city of Charleston, in said county and State; that, as the plaintiff has been informed and believes, the said defendants were duly appointed and qualified

as such managers, and that they were present at the polling place in the said election precinct on the said 6th day of November, 1894, and during all the time the polls were opened on said day were there, acting as such board of managers of the Federal election.

III. That the proper election precinct at which the said plaintiff was entitled to vote is the said First precinct in the Sixth ward of the city and county of Charleston, in the State aforesaid, and that on the said 6th day of November, 1894, and while the polls were open for voting purposes the said plaintiff presented himself at the polling place in said election precinct, and then and there offered to vote and cast his ballot for one of the candidates for the office of member of the House of Representatives of the United States for the State of South Carolina in the Fifty-fourth Congress; and the plaintiff further avers that he then and there had ready the proof of his qualifications as such Federal elector as aforesaid.

IV. That the said defendants unlawfully, wilfully, and injuriously refused to permit the said plaintiff to vote at said precinct and at said Federal election which was there held, according to law, on said 6th day of November, 1894, for one of the candidates for member of said House of Representatives of the United States for the State aforesaid, and wrongfully and wilfully and without any lawful cause or excuse rejected the plaintiff's said vote, to his damage two thousand and five hundred dollars.

Wherefore the plaintiff demands judgment against the defendant for the said sum of two thousand and five hundred dollars and for the costs of this action.

OBEAR & DOUGLASS,
Plaintiff's Attorney.

Filed 11th March, 1895.

4 *Summons.*

UNITED STATES OF AMERICA,
District of South Carolina,

In the Circuit Court, Fourth Circuit.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

To the defendants:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer on the subscribers at their office, Columbia, South Carolina, on or before the rule day occurring twenty days next after the service of this summons on you, exclusive of the day of service.

If you fail to answer this complaint within the time aforesaid the plaintiff will apply to the court for the relief demanded in the complaint.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, at Charleston, S. C., this eleventh day of March, in the year of our Lord one thousand eight hundred and ninety-five, and in the one hundred and nineteenth year of the sovereignty and independence of the United States of America.

OBEAR & DOUGLASS,
Plaintiff's Attorneys.

[SEAL.] J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Filed 11th March, 1895.

5 *Marshal's Return of Service.*

H. J. Hickson, deputy U. S. marshal, being duly sworn, says that he executed the within process by serving a copy of the within personally upon D. L. Dinkler and T. D. Lanigan in the city of Charleston on the 12th day of March, 1895.

H. J. HICKSON, *D. M.*

Sworn to before me 19th March, 1895.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Personally appeared Thomas H. Colcock, deputy U. S. marshal, who on oath says that he executed the within process by serving a copy of same personally on Benj. Elfe in Charleston on this the 16th day of March, 1895.

THOMAS H. COLCOCK, *D. M.*

Sworn to and subscribed before me this 16th March, 1895.

J. WESLEY SMITH,
U. S. Comm'r.

6 *Answer.*

THE UNITED STATES OF AMERICA,
District of South Carolina.

Circuit Court, Fourth Circuit.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJ. ELFE, Defendants.

The defendants, answering the complaint herein, by Wm. A. Barber, attorney general, say:

1. That they deny each and every allegation of the complaint not herein specifically admitted.

2. That they have no knowledge or information as to the allegations of the first paragraph of the complaint sufficient to form a belief, and therefore deny the same.

3. They admit the allegations of the 2nd paragraph of the complaint.

4. They have no knowledge or information as to the allegations of the 3rd paragraph of the complaint sufficient to form a belief, and therefore deny the same.

5. They deny the allegations of the 4th paragraph of the complaint, and aver that as such managers they lawfully performed all the duties enjoined upon them in the conduct of the said Federal election, and the plaintiff was denied by them no right as a citizen or voter to which he was entitled.

Wherefore they demand judgment that the complaint be
7 dismissed with costs.

WM. A. BARBER,
Att'y Gen'l, Defendants' Att'ys.

Filed 6th May, 1895.

Service accepted this 6th day of May, 1895.

OBEAR & DOUGLASS,
Pl'ff's Att'ys.

8 *Oral Demurrer.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

The defendants in the above-stated case, by William A. Barber, attorney general, interpose an oral demurrer to the complaint:

1st. That this court has no jurisdiction of the action:

(*a.*) Because it does not affirmatively appear upon the face of the complaint that a Federal question is involved.

(*b.*) Because it appears from the plaintiff's own statement on face of complaint that a verdict for $2,000.00 would be so excessive as to require the court to set it aside.

(*c.*) Because the action is not brought under the United States statute authorizing actions against managers of election for members of Congress.

(*d.*) Because no action at common law can be maintained when there is a statutory action provided which abrogates the common-law right.

2nd. That the complaint does not state facts sufficient to constitute a cause of action:

(*a.*) Because under section 2008 of the Revised Statutes of the United States an action must be brought for a penalty and
9 not in trespass for damages, and the complaint does not contain proper allegations to entitle the plaintiff to recover the penalty provided by the statute.

(*b.*) Because the allegations in the complaint do not affirmatively show that this court has jurisdiction.

(c.) Because the allegations in the complaint are not such as to bring the action within the provisions of section 2008 of Revised Statutes of the United States as at the common law.

WM. A. BARBER,
Attorney General of S. C., for Defendants.

Filed 3rd December, 1895.

10 *Trial of Cause.*

At the stated term of the circuit court begun and holden at Columbia, S. C., in the district aforesaid, on the 3rd day of December, 1895, this case came up for hearing before the court. The pleadings were read to the court and an oral demurrer was entered by C. P. Townsend, assistant attorney general, on behalf of the defendants. After hearing argument of counsel, the court entered the following order:

11 *Order Sustaining Demurrer and Dismissing Complaint.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

This case comes up on demurrer to the complaint. Among other causes of demurrer is this: That the complaint does not state facts sufficient to constitute a cause of action. There is in the statute law of South Carolina, of which this court is bound to take judicial cognizance, an act providing for the registration of all the voters of this State. The provisions of this act have been passed upon by the supreme court of South Carolina, and the constitutionality of this act has been adjudicated and established. The complaint fails to state that the plaintiff is a duly registered voter of the State of South Carolina. This is a fact—a material averment necessary to make his case.

The demurrer is sustained on this ground without considering the others, and the complaint is dismissed.

CHARLES H. SIMONTON,
Circuit Judge.

3rd December, 1895.

Filed 3rd December 1895.

12 *Assignments of Errors.*

UNITED STATES OF AMERICA,
District of South Carolina.

In the Circuit Court, Fourth Circuit.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJ. ELFE, Defendants.

And now comes Daniel Wiley, the plaintiff in the above-entitled cause, and respectfully assigns the following errors in the order, decree, and judgment rendered by his honor Charles H. Simonton, circuit judge in the said cause, and dated the 3rd day of December, 1895:

1. That his honor erred in holding that the registration enactments of the State of South Carolina are valid regulations of the elective franchise and have been so declared and adjudged by the supreme court of the aforesaid State of South Carolina.

2. That his honor erred in not holding that said registration enactments constitute a scheme to deprive certain citizens of the State of South Carolina, including the plaintiff, of the right of suffrage for causes not prescribed by any constitutional authority.

3. That his honor erred in holding that said registration enactments do not violate the Constitution of the United States in any particular.

4. That his honor erred in holding that said registration
13 enactments do not violate the constitution of the State of South Carolina in any particular.

5. That his honor erred in holding that said registration enactments do not violate section 2 of article I of the Constitution of the United States in this, that they attempt to prevent the plaintiff and others entitled under the constitution of the State of South Carolina and of the United States to vote for members of the House of Representatives of the United States from the State of South Carolina from so doing, unless clothed with certain further qualifications not prescribed by either of said constitutions.

6. That his honor erred in holding that said registration enactments do not violate section 4 of article IV of the Constitution of the United States, which said section requir-s in effect that each State shall provide for its citizens a republican form of Government.

7. That his honor erred in holding that said registration enactments do not violate the fifth amendment to the Constitution of the United States in this, that they attempt to deprive the plaintiff and other constitutionally qualified electors of said State of South Carolina, like circumstanced with him, of their property rights without due process of law.

8. That his honor erred in holding that said registration enact-

ments do not violate section 1 of article XIV of the Constitution of the United States in this, that they attempt to deny to the plaintiff and to other citizens of the State of South Carolina in like circumstances with him the equal protection of the laws.

9. That his honor erred in holding that said registration enactments do not violate section 1 of article XV of the Constitution of the United States in this, that they attempt to deny or abridge the right of the plaintiff and other citizens of the State of South Carolina in like circumstances with him to vote on account of race, color, or ~~previous~~ condition of servitude.

10. That his honor erred in holding that said registration enactments do not violate section 31 of article I of the constitution of the State of South Carolina in this, that they attempt to deny to the plaintiff and to certain other inhabitants of said State, possessing the qualifications provided in said constitution for electors, the equal right to vote and, with other citizens of said State, to elect officers and to be elected to fill public office.

11. That his honor erred in holding that said registration enactments do not violate section 33 of article I of the Constitution of the State of South Carolina, which section provides, "The right of suffrage shall be protected by laws regulating elections and prohibiting, under adequate penalties, all undue influence from power, bribery, tumult, or improper conduct."

12. That his honor erred in holding that said registration enactments do not violate section 2 of article VIII of the constitution of the State of South Carolina, which prescribes the qualifications of electors in said State, in this, that they attempt to add to said qualifications certain further qualifications not prescribed by said constitution.

13. That his honor erred in holding that said registration enactments do not violate section 3 of article VIII of the constitution of the State of South Carolina in this, that they prescribe for each citizen of said State only one opportunity for becoming registered, as directed by said enactments, instead of prescribing and providing for the registration of all electors from time to time.

14. That his honor erred in holding that said registration enactments do not violate section 7 of article VIII of the constitution of the State of South Carolina in this, that they add to the residence of sixty days therein prescribed such further residence as may be necessary to comply with the requirements of said registration enactments.

15. That his honor erred in holding that said registration enactments do not violate section 8 of article VIII of the constitution of the State of South Carolina in this, that they attempt to deprive the plaintiff and certain other citizens of said State in like circumstances with him of the right of suffrage for causes not included in nor prescribed nor authorized by said constitution.

16. That his honor erred in holding that said registration enactments do not violate section 10 of article VIII of the constitution of the State of South Carolina in this, that they add to the residence of three months therein prescribed such further residence as may be

necessary to comply with the requirements of said registration enactments.

17. That while it is conceded that, if said registration enactments are valid and constitutional, his honor correctly decided in sustaining defendants' demurrer, yet it is submitted, said enactments being in violation of the provisions of both the State and United States constitutions, his honor erred in sustaining said demurrer and dismissing said plaintiff's complaint.

OBEAR & DOUGLASS,
Attorney- for Plaintiff, Appellant.

Filed 20th December, 1895.

16 *Petition for Writ of Error.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

To the honorable the circuit judges of the circuit court of the United States for the district of South Carolina:

Daniel Wiley, the plaintiff above named, presents this his petition for the allowance of a writ of error from the decision and judgment of his honor Judge Charles H. Simonton made and filed in the above-entitled case, wherein he sustained the demurrer of the defendants and dismissed the said plaintiff's complaint.

And the said plaintiff prays such writ of error and that a transcript of the record and proceedings and papers in this cause may be sent to the Supreme Court of the United States, sitting at Washington, in the District of Columbia.

And your petitioner will ever pray, and so forth.

DANIEL WILEY,
By his counsel, OBEAR & DOUGLASS.

Filed 26th December, 1895.

17 *Allowance of Writ of Error.*

Prayer of the petition granted and writ of error allowed this 26th day of December, 1895.

CHARLES H. SIMONTON,
Circuit Judge.

Filed 26th December, 1895.

18 *Appeal Bond and Approval.*

UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

DANIEL WILEY, Plaintiff,
vs.
D. L. SINKLER, T. D. LANIGAN, and BENJAMIN ELFE, Defendants.

Know all men by these presents that we, Daniel Wiley, A. Washington, and Robert Brisbane, are held and firmly bound unto D. L. Sinkler, T. D. Lanigan, and Benjamin Elfe, parties defendant in the above-entitled case, in the penal sum of two hundred and fifty dollars ($250.00); to which payment, well and truly to be made and done, we bind ourselves and our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated the sixteenth day of December, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at a circuit court of the United States for the district of South Carolina, in a suit depending in said court between Daniel Wiley, plaintiff, and D. L. Sinkler, T. D. Lanigan, and Benjamin Elfe, defendants, a judgment was rendered against the said Daniel Wiley, and the said Daniel Wiley having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation

19 directed to the said D. L. Sinkler, T. D. Lanigan, and Benjamin Elfe, citing and admonishing them to be and appear in the Supreme Court of the United States, to be holden in Washington, in the District of Columbia, on the day in said citation mentioned:

Now, the condition of the above obligation is such that if the above-bound Daniel Wiley shall prosecute his said writ of error to effect and shall answer and pay all costs incurred by him if he shall fail to make his plea good, then the above obligation shall be void and of no effect; otherwise it shall remain in full force and virtue.

DANIEL WILEY. [L. S.]
A. WASHINGTON. [L. S.]
his
ROBERT x BRISBANE. [L. S.]
mark.

Signed, sealed, and delivered in the presence of—

W. H. PURVIS.
J. L. C. SMALLS.
C. J. MURPHY,
As to A. Washington and Robert Brisbane.

STATE OF SOUTH CAROLINA, }
County of Charleston. }

A. Washington and Robert Brisbane, being severally duly sworn, say each for himself that he executed the foregoing bond or obligation, and that he is worth more than the sum of two hundred and fifty dollars ($250.00) over and above all his debts and liabilities and exclusive of property exempt by law from execution.

A. WASHINGTON.
his
ROBERT x BRISBANE.
mark.

Sworn to and subscribed before me this 16th day of December, 1895.

J. E. HAGOOD,
[SEAL.] *C. C. C. U. S., Dist. S. C.*

Bond approved this 16th day of December, 1895.

CHARLES H. SIMONTON,
Circuit Judge.

(Filed 16th December, 1895.)

20 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States for the district of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between Daniel Wiley, plaintiff, and D. L. Sinkler, T. D. Lanigan, and Benj. Elfe, defendants, a manifest error hath happened, to the great damage of the said plaintiff, Daniel Wiley, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the 25 day of January, 1896, in the said Supreme Court to be then and there held, that, the
21 record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Seal U. S. Circuit Court, District of So. Carolina.

Witness the Honorable Melville W. Fuller, Chief Justice of our Supreme Court, the 26th day of December, in the year of our Lord one thousand eight hundred and ninety-five.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Allowed by—
CHARLES H. SIMONTON,
Circuit Judge.

22 [Endorsed:] United States of America, South Carolina district, fourth circuit. Daniel Wiley, plaintiff, *vs.* D. L. Sinkler and others, defendants. Writ of error. Filed 26 Dec., 1895. J. E. Hagood, C. C. C. U. S., dist. S. C. Original.

23 UNITED STATES OF AMERICA, *ss:*

The President of the United States to D. L. Sinkler, T. D. Lanigan, and Benjamin Elfe, Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be holden at Washington, in the District of Columbia, on the 25 day of January, 1896, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of South Carolina, wherein Daniel Wiley is plaintiff in error and you are defendants in error, to shew cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles H. Simonton, judge of the circuit court of the United States, this 26 day of December, in the year of our Lord one thousand eight hundred and ninety —.

CHARLES H. SIMONTON,
Circuit Judge.

24 [Endorsed:] United States of America. South Carolina district, fourth circuit. Daniel Wiley, plaintiff, *vs.* D. L. Sinkler and others, defendants. Citation. Filed 26 Dec., 1895. J. E. Hagood, C. C. U. S., dist. S. C. Original.

Service of within citation accepted this 27th day of December, A. D. 1895.

WM. A. BARBER, *Att'y Gen'l.*

25 *Clerk's Certificate.*

THE UNITED STATES OF AMERICA, }
District of South Carolina. }

In the Circuit Court, Fourth Circuit.

I, J. E. Hagood, clerk of the circuit court of the United States for the district of South Carolina, do hereby certify that the foregoing is a true and correct copy of all the records and proceedings in the case of Daniel Wiley, plaintiff, against D. L. Sinkler, T. D. Lanigan, and Benjamin Elfe, defendants, rendered as aforesaid, together with all things relating to the same, as appears by the records now on file in my office.

Seal U. S. Circuit Court, District of So. Carolina.

Given under my hand and seal of said court, at clerk's office, in the city of Charleston, S. C., in the district aforesaid, this 11th day of January, A. D. 1896.

J. E. HAGOOD,
C. C. C. U. S., Dist. S. C.

Endorsed on cover: Case No. 16,144. S. Carolina C. C. U. S. Term No., 854. Daniel Wiley, plaintiff in error, *vs.* D. L. Sinkler, T. D. Lanigan, & Benjamin Elfe. Filed January 16, 1896.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

No. [redacted] 7

DANIEL WILEY, PLAINTIFF IN ERROR,

vs.

D. L. SINKLER, T. D. LANIGAN, AND BENJAMIN ELFE.

Argument of Chas. A. Douglass for Plaintiff in Error.

The questions submitted by the Attorney General in his oral demurrer to the complaint (folios 8 and 9 of the Transcript of Record) apparently make a number of issues for the court's decision; but, when carefully examined, there are but few and but one main question to be argued and decided.

The first ground suggested in support of the oral demurrer is that the circuit court had no jurisdiction of the action.

Four reasons are assigned to support this contention:

A. Because it does not affirmatively appear upon the face of the complainant that a Federal question is involved.

B. Because it appears from the plaintiff's own statement, on the face of the complaint, that a verdict for $2,000 would be so excessive as to require the court to set it aside.

C. Because the action is not brought under the Constitution, authorizing actions against managers of elections for Members of Congress.

D. Because no action at common law can be maintained when there is a statutory action provided which abrogates the common law right.

Disposing of these several grounds in the order stated, it is submitted as to the first, that a Federal question so plainly appears upon the face of the complaint, that it would be a useless consumption of the court's time to argue it.

It appears:

A. That—

> "under the Constitution and laws of the State of South Carolina, and the Constitution and laws of the United States, the said plaintiff is and was at the time aforesaid, twenty-one (21) years of age, and is and was in every other respect, a duly qualified elector, and is and was on the said sixth day of November, 1894, entitled to vote for a member of the House of Representatives of the United States from the said State of South Carolina."

B. That—

> "the defendants were on the day and year aforesaid, the Board of Managers of the *Federal* election at the First Election Precinct in the sixth ward in the said City of Charleston, in said County and State,"—

and, it further appears from the said complaint: C. That said managers were duly appointed and qualified, and were present at the polling place on election day, and acted as the board of managers of the *Federal* election.

D. That—

> "the said plaintiff presented himself at the polling place in said election precinct, and then and there offered to vote and cast his ballot for one candidate for the office of a member of the House of Representatives of the United States for the State of South Carolina, in the 54th Congress; and the plaintiff further avers that he then and there had ready the proof of his qualifications as such *Federal Elector* as aforesaid."

E. That—

> "the said defendants unlawfully, willully and injuriously refused to permit the said plaintiff to vote at said precinct and at said Federal election."

Unless it be necessary to allege in the complaint *in haec verbis*, that a Federal question is presented, it would be difficult to conceive how one could be made to appear more perfectly than is made in the complaint here.

The second ground supporting the contention of want of jurisdiction can be as briefly disposed of. There surely is nothing upon the face of the complaint to warrant the contention that it would be the duty of the court to set aside a verdict for $2,000, in the event that such a verdict should be rendered by the jury. The sum of $2,000 might be esteemed by some as as an excessive price to pay for the tortious act of depriving on of his right of the ballot, but we know of no standard by which the trial judge could determine that fact, nor do we believe, under the decisions of this court, that the judge presiding would be warranted in applying such a standard, even if one is furnished him, for the purpose of deciding a jurisdictional question adverse to the plaintiff, especially in a case of this character. Again, the court's attention is directed to the fact that the complaint charges that the—

> "defendants unlawfully, *willfully* and injuriously refused to permit the said plaintiff to vote at said precinct and at said Federal election."

This allegation charges that the tortious act done by the defendants was done *willfully* and *wantonly*.—In such a case, it would be competent for the jury to award exemplary damages. This situation would render the task of the trial judge doubly difficult, if required to determine a jurisdictional question, by passing on the amount of damages properly recoverable, and in advance of the trial of the cause.

The third and fourth grounds given for the plea to the jurisdiction of the court, and numbered by the Attorney General in the demurrer, C and D, respectively, should properly be disposed of together.

The fact that Congress has authorized actions against managers of election for members of Congress does not take away, *in haec verbis*, the common law right to bring an action against the said managers for an alleged tortious act on their part. And it is further submitted that not only does the act of Congress, in words, not preclude the common law action, but it does not do so by necessary intendment.

But even if the statutory action is in derogation of the common law in this regard, we contend that it is not necessary in the complaint to refer to the statute in order to reap the benefits granted thereby. Whether a right to sue owes its origin to the common law or to an act of Congress in derogation of the common law, is a matter of no legal consequence so far as the allegations of the complaint are concerned. It suffices that a right of action exists.

The second general ground given in the support of the oral demurrer is that the complaint does not state facts sufficient to constitute a cause of action. In support of this contention section 2008 of the Revised Statutes of the United States is cited wherein it is provided that an action to recover a penalty may be brought against the managers of election. It is a sufficient answer to this contention to say that the fact that Congress has imposed a penalty upon the managers of election for certain derelictions on their part surely would not destroy the common law right belonging to the plaintiff, to bring a general action for damages for a wrong done him; and until it is shown that there is some foundation for this contention, further time need not be consumed in discussion.

His honor, Judge Simonton, sustaining so much of the demurrer as alleges that the complaint does not state facts sufficient to constitute a cause of action, says:

"There is in the statute law of South Carolina, of which this court is bound to take judicial cognizance, an act providing for the registration of all the voters of this State. The provisions of this act have been passed upon by the Supreme Court of South Carolina, and the constitutionality of this act has been adjudicated and established. The complaint fails to state that the plaintiff is a duly registered voter of the State of South Carolina. This is a fact—a material averment necessary to make his case."

This raises the main question for the court's consideration, and to it, we shall devote our time and attention.

If the registration law of the State of South Carolina be valid and subsisting, then the ground upon which the circuit judge sustained the demurrer is sound. For, if there is existing a valid and constitutional enactment in South Carolina, requiring all voters to be registered in accordance with the provisions of the act on that subject, as a condition precedent to the right to vote, then it is manifest that it should have been affirmatively alleged in the complaint that the plaintiff had duly complied with the law, and was therefore a duly *registered*, as well as an otherwise duly qualified elector.

If on the other hand, the act in question is invalid, unconstitutional and void, then it logically follows, that the plaintiff in error had a perfect legal right to ignore the existence of such void enactment, and to simply allege his general qualifications as an elector under the Constitution of the State and of the United States.

It becomes necessary, therefore, to inquire into the constitutional integrity of the Act of Assembly of South Carolina known as the Registration Law.

Bearing upon this issue let us put your honors in possession of the provisions of the constitution of the State of South Carolina.

Section 31—of the Declaration of Rights—which is Article 1—provides:

"All elections shall be free and open, and every inhabitant of this commonwealth possessing the qualifications provided for in this Constitution shall have equal right to elect officers and be elected to fill public offices."

Section 33, Article 1:

"Right of suffrage shall be protected by laws regulating elections and prohibiting under adequate penalties all undue influence from power, bribery, tumult or improper conduct."

Section 2 of Article 8:

"Every male citizen of the United States of the age of twenty-one years and upwards, not laboring under the disabilities named in this Constitution, without distinction of race, color or former condition, who shall be a resident of this State at the time of the adoption of this Constitution, or who shall hereafter reside in this State one year and in the county in which he offers to vote sixty days next preceding any election, shall be entitled to vote for all offices that are now or hereafter may be elected by the people, and upon all questions submitted to the electors at an election; Provided, That no person shall be allowed to vote or hold office who is now or hereafter may be disqualified therefor by the Constitution of the United States until such disqualifications shall be removed by the Congress of the United States; Provided, further, That no person, while kept in any almshouse or asylum, or of unsound mind, or confined in any public prison, shall be allowed to vote or hold public office."

Section 3 of Article 8:

"It shall be the duty of the General Assembly to provide from time to time for the registration of all electors."

Section 7, Article 8:

"Every person entitled to vote at any election shall be eligible to any office which now is, or here-

after shall be, elective by the people of the county where he shall have resided sixty days previous to such elections, except as otherwise provided in this Constitution or the Constitution of the United States."

Section 8 of Article 8:

> "General Assembly shall never pass any law that will deprive any of the citizens of this State of the right of suffrage except for treason, murder, robbery or dueling whereof the person shall have been duly tried and convicted."

Section 31 of article 1, and section 33 of article 1, and section 2 of article 7, and section 7 of article 8, and section 8 of article 8, all have reference to and *in haec verbis* define who are the qualified electors of the State.

> "*Every inhabitant* of this commonwealth possessing the *qualifications* provided for *in this* Constitution shall have equal rights to elect officers and be elected to fill public offices.
>
> "Every male citizen of the State of the age of 21 years and upwards, not laboring under the *disabilities* named in this Constitution, &c., &c., shall be entitled to vote, &c., &c.
>
> "General Assembly shall *never* pass *any* law that will deprive *any* citizen of this State of the rights of suffrage, except for treason, murder, robbery or duelling whereof the person shall have been duly tried and convicted."

Seeking, as it were, to leave no room for any doubt, it defines and redefines the qualifications of an elector; and then, even then, as if fearful some hostile mind might distort its meaning and find in a lurking place from which to make an onslaught upon its suffrage guarantees, it proceeds to enumerate what shall be the disqualifications, and declares in solemn asseveration that the "General Assembly shall never pass any law," &c., &c.

We therefore make bold to assert that the General Assembly of South Carolina has not now, nor has it ever had since the adoption of the constitution of 1868, any semblance of constitutional warrant for adding to the qualifications and disqualifications of electors, by direction or indirection.

Judge Cooley, in his great work on Constitutional Limitations, says:

> "It is a rule of construction that when the Constitution defines the circumstances under which a right may be, or a penalty imposed, the specification is an implied prohibition against legislative interference, to add to the condition or to extend the penalty to other cases."

The Supreme Court of South Carolina, construing the homestead article of its State constitution, has so clearly followed the principle as first announced by Judge Cooley, it is worthy of note here. The constitution enumerated certain articles of personalty as exempt by law to judgment debtors. The Legislature thereafter in an homestead act specified certain other articles not named in the constitution—among them bailed cotton. Upon a proper case made and carried to the Supreme Court, that tribunal held that—

> "legislature was limited to the articles enumerated in the constitution as exempt, and that a more extended enumeration was unconstitutional and void."
>
> Duncan *vs.* Barrett, 11 S. C. 333.

In the light of these very specific and emphatic provisions of the constitution in reference to the franchise, the qualifications and disqualifications therein enumerated must be read in the light of section 3, article 8, directing the General Assembly "to provide from time to time for the registration of all electors."

By the very requirements of the constitution itself, a threefold duty is imposed upon the General Assembly in reference to registration:

1. Must be such registration as will not add to the qualifications or disqualifications of electors, so clearly set forth in the fundamental law.

2. Registration "from time to time," at stated periods.

3. Registrations of all the electors of the State, defined in the constitution itself.

It will, therefore, be seen that the limitations put upon the General Assembly of South Carolina in regard to registration are peculiarly rigorous.

Registration laws are, therefore, *per se*, constitutional even where the written constitution is silent upon the subject.

When, within proper limits, the better doctrine is that they are wholesome, healthful regulation of, and protection to, the right of suffrage, but must be consistent with the right itself; must be necessary, reasonable, uniform and impartial; must be *regulation*, not *destruction*; must *facilitate* and *not impede* and *abridge* the exercise of the franchise.

Possibly the leading case on the subject in this country is Capen *vs.* Foster, reported in 12 Pick. (Mass.), at page 485. The real issue in that case was whether registration *per se* was in violation of the constitution. The particular act in question was one for the City of Boston, which provided for a full, complete list of the voters, alphabetically arranged before each election, and depriving voters not registering from voting at that election.

Chief Justice Shaw, in sustaining the constitutionality of this unobjectionable registration law, laid down the principles applicable to all. He said:

> "It is clearly within the just constitutional limits of the legislative power to adopt any reasonable and uniform regulations in regard to time and mode of exercising that right which are designed to secure and facilitate the exercise of such rights in a prompt, orderly and convenient manner. Such a construction

would afford no warrant for such an exercise of legislative power as, under the pretense and color of regulation, should subvert or injuriously restrain the right itself."

Mr. Freeman, in his very full note to a report of Capen *vs.* Foster, says:

"The construction given by Shaw, C. J., in Capen *vs.* Foster, as to laws requiring voters to be registered in order to exercise the elective franchise, is adopted in all those States where it is not forbidden by their respective constitutions."

The author of the note, after laying down the general proposition that a registration law is not *per se* unconstitutional, continues:

"While this principle is uniformly recognized, it is the *manner* in which this legislative power is exercised which gives rise to the objection that the particular enactment is unconstitutional, as impairing the right which the organic law confers; for as well established as the principle itself is its limitations, that any enactment intended to take away or unnecessarily postpone or embarrass the right of election would be set aside as unconstitutional."

Brightly, in his "Leading Cases on Elections," says:

"The power to enact registration laws, so as to insure orderly exercise of the right of suffrage within the limits prescribed in Capen *vs.* Foster, is now generally admitted; that is to say, they must be reasonable and uniform regulations, and not under the color of regulation subvert or injuriously restrain the right itself."

"The question whether a legislative provision is or is not constitutional, its validity always turns upon the question whether it is or is not a reasonable and convenient regulation of the right to vote, or is, under the pretense of regulation and abridgment, a subversion or restraint of that right.

Paine's Law of Election, 300.

Judge Cooley thus states the law at page 757 of his work on Constitutional Limitations:

> "All regulations of the elective franchise, however, must be reasonable, uniform and impartial, they must not have for their purpose, directly or indirectly to deny or abridge the constitutional right of the citizen to vote or unnecessarily to impede its exercise—if they do, they must be declared void."

Naar on Suffrage, at page 176, says:

> "The obvious conclusion is that the legislature can not add anything to the qualifications prescribed by the Constitution of the State."

In Monroe *vs.* Collins, 17 Ohio, 665, it is very properly said—

> "that the legislation should be to facilitate rather than to impede the right of suffrage. Between the legislative power and the legal elector, no matter who or what he is, the constitutional provision stands as a bulwark for the protection of his right to vote."

Accordingly, the Supreme Court of Pennsylvania, in an elaborate opinion declaring the registration law of the State void, as in contravention of the fundamental law, thus strongly state the case:

> "For an orderly exercise of the constitutional qualifications it is admitted that the legislature must prescribe necessary regulations as to the place, mode and manner and whatever else may be required to secure its full and free exercise, but this duty and right inherently imply that such regulations are to be subordinate to the enjoyment of the right, the exercise of which is to be regulated. The right must not be impaired by the regulation, it must be *regulation* purely, not destruction. If this were not an immutable principle, the elements essential to the right itself might be invaded, frittered away or entirely destroyed, under the name and pretense of regulation, and thus would be the natural order of things

subverted by making the principle subordinate to the accessory. To state it, is to prove this position."

See Page *vs.* Allen, 58 Pa. 338.

In the later case of Patterson *vs.* Barlow, reported in 60 Pa., page 75, the court held valid a special registration law for the City of Philadelphia, but did not trench upon the general principles laid down in Page *vs.* Allen. Mr. Freeman, in reporting this case in the American Decisions, says in note:

> "The elaborate disssenting opinions of Justice Thompson and Sharswood clearly enforce the rule that registration laws should not be made so vexatious or so embarrassing as to impede or to discourage the attempt to register."

In the English and American Encyclopaedia of Law, Vol. 6, at page 287, it is said:

> "No law can be passed by which the free exercise of the right of suffrage granted by the Constitution will be impaired, nor can the constitutional qualifications be abridged or other qualifications added under the pretense of regulation; nor can such conditions be required as to make it burdensome to comply with them."

In the case of Edmunds *vs.* Bamberry, 28 Iowa, 267, Chief Justice Dillon said:

> "These regulations are valid, provided they do not amount to a denial or invasion of the right conferred by the Constitution."

In the case of Monroe *vs.* Collins, 17 Ohio, 686, the Supreme Court declared the registration law of that State unconstitutional, the court saying:

> "What the legislature can not do directly, it can not do by indirection. It has no power expressly to deny or take away the right, it has none to define it away or to unreasonably abridge or impede its

enjoyment of laws professing to be remedial. The power of the Legislature in such cases is limited to laws regulating the enjoyment of the right, by facilitating its lawful exercise and by preventing its abuse."

The Constitution of North Carolina requires the General Assembly to provide for the registration of voters and that no one shall vote without registration. The Supreme Court of the State, construing that provision, says:

> "This means that the general assembly shall provide the conveniences and necessaries so that voters can register. It is to facilitate the exercise of the right of the ballot and not to defeat it. It is true that this included the power and the duty to throw around it such guards as will protect the ballot from fraud. But the act under consideration is framed upon the idea of making the ballot as difficult as possible, indeed, it makes it impracticable."
>
> Perry *vs.* Whittaker, 71 N. C. 475.

So in State *ex relatione* Wood *vs.* Baker, 38 Wis. 71, it is said:

> "Statutes can not impair the right to vote. Though they may regulate its exercise, every statute regulating it must be consistent with the constitutionally qualified voters right to suffrage when he claims his right at an election—these statutes may require proof of the right consistent with the right itself, not to abridge or impair the right, but to require reasonable proof of the right.
>
> "Any legislation by which the exercise of his right is postponed, diminishing them and must be unconstitutional, unless it can be defended on the ground that it is reasonable and necessary in order that the right of the proposed voter may be ascertained and proven."
>
> Kenner *vs.* Wells, 144 Mass. 497.

The Supreme Court of Kentucky in a carefully prepared opinion as late as November, 1890, declared the registration

law of that State void and unconstitutional. The court said:

> "It may be now regarded as settled law that in the absence of constitutional inhibition, the Legislature may pass registration laws, even of a local character, if they merely regulate in a reasonable and uniform manner, how the privilege of voting shall be exercised. It was so held in the case of Capen *vs.* Foster, and the courts in many of the States have so decided. . . . The true theory upon which these laws are based is that they must not impair or abridge the elector's privilege, but merely regulate its exercise by requiring evidence of the right. The right can not be impaired, but it may be regulated. Evidence of it may be required, consistent with the right itself."

This case is reported in 14 Southwestern Reporter (Ky.), 688.

Among the numerous other cases to the same effect are the following:

Dells *vs.* Kennedy, 40 Wis. 555.

Steanes *vs.* Connor, 22 Neb. 285.

Morris *vs.* Powell (Ind.), 29 Am. Law Register, 839, 125 Ind. 281.

White *vs.* Commissioners of Multnomah County, 13 Oregon, 317.

Daggett *vs.* Hudson, 43 Ohio, 548.

And we might go on *ad infinitum* piling up the adjudications of the courts from all over the land, until they were mountain high, and yet it would be useless consumption of the time of this court. For if there is one proposition of law in the books supported by all the adjudications, it is that a registration act, to be valid, must be a thing of *regulation* simply, and the regulation must be *necessary* and *reasonable*, that they must be to *secure* and *facilitate* the right of suffrage, and not *impair, abridge, or destroy it*, that registration must be subordinate to suffrage, and not its master and destroyer! Guided, then, by these enunciations of the law,

concurred in by all the courts of the country, let us see how stands the registration law of South Carolina. Will it bear the test laid down, and established by an unbroken current of judicial authorities? If it shall be found to "facilitate" and "secure" to the constitutionally qualified voter his right of suffrage, that it "regulates" and only "regulates" the exercise of the higher right of the ballot, that its regulations are consistent with the right itself and in harmony with the suffrage provisions of the constitution, then your honors will declare valid the law. If, however, the conclusion can not be escaped that the scheme of the act is to suppress the suffrage at every turn and point, to "abridge" and "impair its exercise," to render "burdensome" the duty of registering and the right of voting a burdensome task, this tribunal will pronounce judgment accordingly, and uphold the fundamental law of the commonwealth and nation.

For the purpose of clearness and convenience, we shall discuss the obnoxious features of the registration law as it stood at the time of the convening of the State Legislature in 1894; then we will take up the Act of December, '94, and see whether it helps, *hurts* or kills this registration scheme.

We submit, therefore:

1. That the certificate feature of the act renders the whole enactment fundamentally vicious. Registration means the entry in book or on poll lists, the names of the voters of a given election district, and this is what the Constitution obviously contemplates in section 3 of article 8.

The purpose of registration is to prevent "repeating" and the voting by parties not constitutionally qualified, or other frauds upon the franchise. The provisions of the act are not *registration simply*, and yet the chief feature of the law, if you can call one part of the scheme more remarkable than another, is that the voter is required not only to make good his right to register and must be registered, but he must have as an insignia of his rank and honor, in his pocket,

his pass, *his little pass*, without which he can not vote, although he may be a duly qualified elector under the Constitution, and his name duly entered upon the registration book.

At the polls with an election on him, without the certificate, the elector, like Sampson, shorn of his hair and robbed of his strength, lies at the mercy of his enemies—and the supporters of this iniquity should exclaim with Delilah: "The Philistines be upon thee, Sampson!"

Can this be true? Is it possible that the voter is to be robbed of his franchise, not on account of his failure to register—not by registration or the absence of registration, but by failure or inability to produce a certificate required to be held, owned and kept by the elector?

Section 142 (we quote from the Revised Statutes of '93), provides that—

> "Each elector registered (mark the word) as aforesaid, shall thereupon be furnished by the supervisor with a certificate, which shall contain a statement of his age, occupation and place of residence, as entered in said registration book, and which certificate shall be signed by the supervisor; and no person shall be allowed to vote at any other precinct for which he is registered, nor unless he produces and exhibits to the managers of election such certificate."

That this requirement adds a qualification to the right to vote not contained in the constitution, can not, for one moment, be denied, and that a certificate is not registration, is equally beyond the pale of serious controversy.

Can the reasonableness or necessity of such a provision be shown upon any sort of ground, real or imaginary? Can it be called in any sense "registration," or even part of it, to require that the voter shall have and carry with him a transcript in part of the registration books? Can it add to the registration itself that a copy of a part of it should be given out? If the registration—the original, real and only

registration, to wit, the books—are not correct, can it be possible that a copy of them will make things better? Can the copy be more correct than the original from which it is taken? But not only is not a provision (section 98) no part of registration and unnecessary and unreasonable, but it seems to have been intended to impair and abridge the suffrage and to render its enjoyment (?) a burden. To have to receive and keep and present such a certificate as the *sine qua non* to vote is burdensome, "vexatious" and "harrassing." Is there anywhere, from the Piedmont to the sea, a South Carolina voter who doesn't say amen to this?

The requirement referred to is certainly bad enough, but see how the plot thickens as the play progresses:

Section 146:

> "If the voter moves from one place to another in the same precinct he must surrender the old and get a transfer certificate."

Section 147:

> "If the voter remove from one precinct to another in the same county, must surrender the old and get transfer."

Section 148:

> "If the voter remove from one county to another, old certificate must be likewise surrendered and transfer obtained and then a new one issued."

And as if to make it the culmination of the voters' woes it is provided (section 150, Revised Statutes, 1893) that if he loses a certificate, in all its ramifications, after renewals and transfers, that he may get a renewal thereof upon furnishing proof, not that he is a qualified voter under the constitution and duly registered on the books kept for that purpose, but that his certificate (copy from the books) is really lost.

Note the provision, please:

"In case of a loss of any certificate the elector losing same shall be entitled to a renewal thereof by the supervisor, upon application and proof of such loss in the following manner, to wit: He shall at least thirty days before the next general election make application, under oath, setting forth the facts of such loss and the circumstances attending it, as near as may be, and stating that he has not sold, bartered or parted with the same for any pecuniary, valuable or other consideration, and has not wilfully destroyed the same, which application the supervisor shall examine and consider, requiring other evidence under oath if in his judgment it is necessary to a determination as to the loss thereof, &c."

The loss of bank bills or bank stock could not entail on the loser more rigorous, harsh and stringent requirements to prove the loss than is required of the elector to save his ballot from destruction, even at the very time he is being put to trouble, expense and annoyance to prove his title to citizenship he is already a duly registered as well as a duly qualified voter!

The provision contained in section 14¢, if there were no other obnoxious requirements in the act, would of itself be sufficient to successfully challenge the constitutional integrity of the entire law. To require a voter to surrender his certificate and get a new one upon every removal from one residence to another in the same precinct is monstrous, and could not possibly be intended for any other purpose than to vex and harrass the voter in his efforts to register and to vote.

A careful and painstaking examination of the various registration acts of the several States, so far as we have been able to discover, warrants the statement that the certificate feature is original and peculiar to the South Carolina Act. But if your Honors shall conclude that there is some semblance of necessity for the certificate provisions, which we have set out, fearfully burdensome and exacting as all

must admit them to be, then, even then, it is earnestly contended that the failure of the legislature to make provisions for the voter to otherwise establish his identity as the party registered, makes utterly void the act in question.

To say that a voter constitutionally qualified and legally registered, therefore entitled to vote, can not do so if he has not a certificate, and in the absence of the certificate, shutting the door in his face and denying him the right to submit other sufficient proof, is so clearly an unnecessary harshness, so palpably an abridgment of the right to vote, as to make it utterly indefensible from the standpoint of reason and of the fundamental law; so it is submitted to the court that the certificate scheme of registration is unreasonable and unnecessary, and is an abridgment of and impediment to the suffrage.

2. The time allowed for registration and for the closing of the books, the most important parts of the act, are violative of the Constitution, and void, because:

(*a*) The number of days given for registration is so short as to amount itself to an abridgment of the ballot.

When regard is had to the frets and frills surrounding registration under this act, and the red tape of the lengthy affidavits of qualifications—the furnishing other proofs if required—the paraphernalia of transfers—the infinite deal of proofs exacted in cases of loss of certificates, and the penalty imposed if certificate is not produced at the polls, one day in each month, commencing in December after one election down to July 1st preceding the next, is so grossly inadequate for real, *bona fide* registration, as to warrant the conclusion that it not only impairs, but threatens destruction of the suffrage—not only threatens, but *does, ex necessitate*, actually destroy the right of the ballot of hundreds of constitutional electors in every quarter of the State.

(*b*) The closing of the books on July the first is *fatal* to the act, as being generally "unnecessary" and "unreasonable," and as being specifically in violation of Section 2 of Article 8 of the Constitution.

To close the books on July the first, clearly unnecessary and unreasonable, so seriously impairs and abridges the franchise as in itself and of itself to make void the law. To stop all general registration full *four* months before the holding of the election, is actually without a precedent in the political history of the country, and not only without a precedent but without defense. It would take effrontery indeed to contend that there could be even an imaginary necessity to close the books one hundred and twenty days before the books are needed for the purpose of an election. As if the act went always and at all times by "contraries," the registration books are open when they should be closed, closed when they should be open, that is if the purpose of the act be to facilitate and encourage registration, and not to hinder it and render the task of compliance with the law difficult, if not impossible. We mean to say that if the voter is to be deprived of any part of the time of the year of an election in which to register, it certainly and manifestly should be the earlier months, not those immediately preceding the election. The books are open in the busy season of the year for one day in each month, months before the masses have the time or the disposition to think about the coming of an election. Then they close and are kept closed throughout the time between the sowing and the harvest, and just at a period when people have an opportunity to think of other things than the stress of private business, when political matters can be thought of and talked of, when the vigilant voter will naturally want and seek to register. Throughout that period, from July 1st to election day in November, the doors of the registration office are closed, and the sanctum of the autocratic dispenser of our suffrage can not be invaded by the eager steps of the hungry voter. The Constitution says that "all elections shall be free and open." We would have this court open wide its doors, tear down the walls of this registration house and give to the citizens of the commonwealth their free right of

suffrage, guaranteed them by the constitutions of the State and nation.

In Kinneen *vs.* Wells, 144 Mass., *supra*, the court said:

> "It is not unreasonable that registration should terminate before the election actually commences at a previous time sufficiently long to make proper preparations therefor."

The Supreme Court of Michigan, in the case of Attorney General *vs.* City of Detroit, reported in 44 N. W. Reporter, page 388, declared the act of '89 of that State void as against the provision of the Constitution. Under the act, books closed ten days before the election. The court says:

> "There is no good reason why the board of registration can not sit within the ten days before the election and thoroughly preserve to each elector his constitutional right."

How stands this provision as to the closing of the books in some of the other States? In Massachusetts the board must be in session one hour *even on the day of election.*

In Kansas, registration closes *ten days before the election,* but voters are permitted at all times during the year to register.

In Mississippi any person not on the the registration list may appear *at any time* and register.

In Kentucky registration is permitted *up to within three days* of the election.

In Wisconsin books close *ten days before* election. This is required by the constitution of the State.

In California an elector may have his name registered *at any time before* the *polls open* upon showing good reason for not registering sooner.

In New York books close *three days before the election.*

These are fair samples of the State enactments in this regard. Moreover, to close the books on July 1 is specifically violative of section 2 of article 8.

That section of the Constitution provides that one is a qualified voter when he has lived in the State one year and reside in the county which he offers to vote sixty days next preceding an election.

The registration act provides that the books shall be closed on the first day of July before each election. If that provision means anything, it is that registration must stop on that day except for parties coming of age between that day and the general election. In other words, it is required of every voter that he register four months before the election if he would cast his ballot. To require this is tantamount to requiring a residence in the county in which the voter expects to vote one hundred and twenty days before the election, while the constitution says that sixty days' residence is sufficient.

The real effect of the provision now under review is beyond the domain of debate. That no party is entitled to register between the closing of the books on July 1 to the holding of the election in November, except parties coming of age during that *interim*, is made so clear by section 97 that argument can not add to the explicit language of the legislative enactment. The section reads:

> "Any person coming of age and becoming qualified as an elector, may appear before the Supervisor of Registration on any day on which the books are opened as aforesaid, and take the oath as to his age and qualifications as hereinbefore provided, and if the Supervisor finds him qualified, he shall enter his name upon the registration book of the precinct wherein he resides—such person shall have the right of appeal as aforesaid, in case the supervisor shall not find him qualified. Provided, however, that in case a person shall not be of age to qualify him as an elector on the day of the closing of the books of registration before any general election, but shall be of such age as will qualify him as such elector before the said general election, and shall appear before the supervisor of registration and take the oath thereto

and the supervisor shall find him qualified, he shall enter his name on the registration book as aforesaid."

It must be admitted, because the conclusion cannot be escaped, that the books, on and after July 1, are closed to and against every elector, except parties reaching their majority between July 1 and the first Tuesday in November.

And from that proposition it follows, irresistibly, that all voters, except the minority class, must, *ex necessitate*, reside in the county in which they may desire to vote, one hundred and twenty days before the election!

This very fatal result is not remedied by the provisions of section 102 (we quote from the General Statutes of '82), wherein it is provided that parties removing from one county to another may get transfer certificates.

A glance at that section will suffice to convince your honors that the voter can only get such transfer, if he is already a duly registered voter, in the county from which he removes.

Let us give your honors two instances. That will settle the contention, beyond a cavil.

A and B, citizens of Georgia and of the United States, remove from Augusta, in that State, to Columbia, South Carolina, on July 5, 1893; they both live in Richland county to July 5, 1894, and thus complete the constitutional requirements of one year's residence in the State. A purchases a home in Richland and decides to make that county his place of residence. B, on July 6th, '94, removes to Fairfield to cast his lot with the good people of that county. They live in their respective counties through July, August, September, October and down to and including the 6th day of November. Under the constitution of South Carolina (Sec. 2 of Art. 8), they are qualified electors. Will anyone dare deny it?

And yet it will be interesting to go with each of them and learn of their respective experiences at the polls. A, in Richland, is refused his ballot; he can't vote because he

didn't register—he didn't register because the books were closed four days before he completed his one year's residence in the State, and yet he has lived in the State one year and "in the county in which he offers to vote (not) 60 days next preceding any election," but one hundred and twenty days. B is told that he can't vote, because he didn't register—he didn't register because he came to Fairfield on July 6th, after the books were closed, and he could not get a transfer certificate from Richland to Fairfield because under section 102 he had not previously registered in Richland. This previous Richland registration, with him, was an impossibility, because when the books closed on July 1 (the last day of grace) he had not lived out his one year's residence in the State.

Citizens of the United States—have lived continuously in the State one year, and in their respective counties twice times sixty days—and yet the legislature says, "Gentlemen, we will not let you vote."

By the Constitution the period of residence reckons from the day of election. By the registration law, from the first day of July! Has the Constitution lost its potency when it says:

> "The general assembly shall never pass any law that will deprive any of the citizens of this State of the right of suffrage, except for treason, murder, robbery, or duelling, whereof the person shall have been duly tried and convicted?"

> "The prerogative of defining the right of the suffrage is that of constitution makers and not that of the creatures of constitutions. The electors who frame constitutions and give being and power to legislatures are above the created things, and legislators can not reach above themselves to the source of their power, and the authors of their existence, for the purpose of enlarging or restricting the sovereign right of suffrage.

"If a legislature can limit, or even define, the right of suffrage, then it is greater than its constituency. The right of suffrage is a political right of the highest dignity. It is a right, as the courts declare, no department of government, nor all of them combined, can divest the citizen, otherwise than in the mode and to the extent expressly authorized by the Constitution."

Morris *vs.* Powell, (Ind.) 29 American Law Register, *supra.*

In White *vs.* Commissioners of Multnomah County, 13 Oregon 317, it is said:

"Under this act he who goes to the polls on election day possessing every constitutional qualification, may find that the legislature has stepped between him and the Constitution—he finds his vote denied because he has not done something which the legislature required him to do—he discovers that he is not a qualified elector and yet he is told that his omission to do the act which had the effect to disqualify him is not itself a disqualification. This will not square with the logic of facts. The distinction between what is substantive and what is modal is confounded. . . . If this can result, then the Constitution does not mean what it says."

How very strong and convincing is the logic and reasoning of the Oregon court, and how apt it is to the case at bar and to the act under review. A citizen is told that under the Constitution of South Carolina he is a qualified elector if he resides in the State one year, and in the county in which he expects to vote, sixty days before the election, and yet when he goes to the polls to vote, knowing that he has been in the State the year required, and in the county sixty days named in the Constitution, he is told that he ought to have been in the county on July 1 and to have then registered one hundred and twenty days before the election; that without this, his ballot must be denied. But, answers the

voter, I was not in the county on July 1, and could not register—the Constitution requires of me but a sixty days' residence; but notwithstanding this, his vote is refused and his suffrage denied.

In Massachusetts it was held that a registration law requiring that the voter must be qualified to vote thirty days before the election to register, was void. It was said:

> "It would still provide for adding another qualification to those required by the Constitution as much as the period of domicile within the town or commonwealth required by the Constitution before voting was extended to a longer period."
>
> Kinneen *vs.* Wells, 144 Mass., *supra.*

See, also, the following:

State *vs.* Wells, 5 Wis. 308.
Quin *vs.* State, 25 Ind. 485.
Kilham *vs.* Ward, 2 Mass. 236.
Bridge *vs.* Lincoln, 14 Mass. 367.

In McCaffery *vs.* Guyer, 59 Pa. Reports, 109, it was distinctly held:

> "The Legislature can not add to the constitutional qualification of electors; one who is a qualified voter under the Constitution can not be deprived of the elective franchise by a legislative enactment."

In this case plaintiff had all the constitutional qualifications of an elector; by act of the legislature it was attempted to deny the right of an elector to all who under the act of Congress had been registered as deserters from the military service of the United States, though not tried and convicted of the offence. This act the court held unconstitutional.

See, also, Green *vs.* Shundy, 39 N. Y. 418.
Brown *vs.* Grover, 6 Bush. 1.
Cooley's Constitutional Limitations, 753.
See 23 American Decisions, 632.
Monroe *vs.* Collins, 17 Ohio, 686.

The Supreme Court of North Carolina held that provisions of act amending the charter of the City of Wilmington requiring ninety days' residence in any given ward, was obnoxious to the constitution of that State; also a registration provision that required proof of above fact as condition of registration.

This is the language of the court:

> "Our Government is founded on the will of the people—their will is expressed by the ballot. The ballot embraces every citizen twenty-one years of age who has had a residence in the State twelve months and the county where he offers to vote thirty days."
>
> Peoples *vs.* Canada, 73 N. C. 198.

Mr. Naar, on Suffrage, at page 176, as quoted above, says:

> "The obvious conclusion has been that the legislature can not add anything to the qualifications prescribed by the Constitution."

3. There is nowhere in the South Carolina act any provision for registration of electors who may have been sick or absent, or for other good and sufficient reasons, did not register or could not have registered on or before July 1.

The registration act of Wisconsin, passed in 1879, required a previous registration except in the cases of one becoming qualified between the last day of registration and day of election, and any one not registered prohibited from voting at that election. The Supreme Court of that State in the leading case of Dells *vs.* Kennedy, 40 Wis. 555, declares unconstitutional said act, and says:

> "By the effect of this law the elector may, and in many cases must and will lose his vote by being utterly unable to comply with this law by reason of absence, disability, or non age, and an elector can lose his vote without his own fault or negligence, and it makes no exception in his favor and provides no method, chance, or opportunity for him to make proof of his qualification on day of election. This

law undertakes to do what it can not do, viz., to deprive a person of an absolute right without his laches, default, negligence, or consent, in order to exercise and to enjoy it, to require him to accomplish an impossibility."

And likewise the registration law of Kentucky was declared void as against the constitution of the State. We refer to the case of City of Owenboro *vs.* Nickmen et al. That law provided for registration on first Monday in July and two days succeeding, and every person declared entitled to register who could vote at the succeeding August election. The provisions of the act provide for but one registration during the year and to govern all elections during that year, and no voter shall be registered unless he personally appeared before the registration officer, and no mode is provided whereby a voter can in any way manifest his right to vote if he fail to register in July. He is deprived under the act referred to of the suffrage privilege as to all elections for a year from that time. Commenting on the provisions of this act, the court uses the following language:

"It is evident, under the provisions of the law now in question, several classes of voters, although constitutionally qualified, will be deprived of the privilege of voting for a year, and without any fault on their part, viz.: Those who have been prevented by sickness from registering in July, and those otherwise qualified but have not resided in the city 60 days before the August election; those who may remove to the city but may be qualified to vote at subsequent elections during the year, are all deprived of the right to vote at any election held in a year of the time of registration. Such a law strikes down the right itself, and is not a mere regulation of it. Containing no provisions for special registration, it, instead of facilitating and securing the privilege and guarding against fraud and corruption, not only impedes, but actually subvert and destroys the right itself, and is in direct conflict with section 7 of our bill of rights, which declares that all elections shall

be free and equal. While the legislature may enact registration laws, yet they, like all others, must conform to the constitution. It can not do indirectly what it can not do directly, and the statute as effectually deprives those we have enumerated of their constitutional privileges as if it had declared in express terms that they should not do so. . . . Such a registration law is not merely unreasonable, but it adds to the qualifications required of the voter by the constitution and abridges his right under it."

It was well said by the Supreme Court of Michigan in the late case of Attorney General *vs.* City of Detroit, *supra:*

"The law is unreasonable and void, in that it undertakes to disfranchise a large number of voters through no fault of their own, and to make unlawful distinctions between natives and foreign born. The Constitution authorizes the legislature to enact laws to preserve the purity of election and guard against the abuses of the elective franchise, but this does not authorize by direction or indirection the disfranchisement, without his own fault or negligence, of any elector under the Constitution. . . . But more unreasonable still is that this act contains no provision by which a person who is sick or absent on the days of registration can vote on election days. . . . But more unreasonable still is that this act contains no provisions by which a person who is sick or absent on the days of registration can vote on election day. . . . The man who is ill or unable to attend the meeting of the board but who is able to be out on the day of election is deprived of his ballot for no good reason. . . . Even the members of this court might be unable to register without a decided detriment to the public business and might be compelled to elect between the neglect of important official duty and the loss of suffrage."

This court declared, after investigation:

"All of the registration laws that have been upheld by the courts of other States have contained some provision by which a sick man or an absent voter

> might not be necessarily disfranchised, except in Illinois."

We can not divine why the Supreme Court of Michigan in the case from which we have just quoted, should have regarded even the State of Illinois an exception to the rule laid down. In that State a registered voter is allowed to vote on making proof of his right to vote in the manner prescribed by the registration statute of that State and without showing or making any excuse for not formerly registering. The Supreme Court upheld that statute as valid.

4. The act *perpetually* disfranchises electors failing to register for any reason during his one period of grace. This proposition brings us to the last, but by many odds the most fatal and objectionable, feature of the law.

Section 90 of the General Statutes of 1882:

> "All electors of the State shall be registered as hereinafter provided, and no person shall be allowed to vote at any election hereafter to be held unless registered as herein required."

Section 132 of the Revised Statutes of 1893 is the corresponding section to 90 of Statutes of '82. It reads:

> "All electors of the State shall be registered, and no person shall be allowed to vote at any election hereafter to be held, unless he shall have been heretofore registered in conformity with the requirement of Chapter 7 of the General Statutes of 1882 and acts amendatory thereof, or shall be registered as herein required."

Remembering that section 90 of the General Statutes of 1882 was passed before the original registration in the months of May and June, 1882, and that section 132 of the Revised Statutes of 1893 quoted, was framed after the registration of 1882, it is perfectly manifest:

(*a*) That the Legislature sought by this act to permanently disfranchise some voters.

(*b*) That the permanent disfranchisement was aimed at and intended for all parties who were qualified to vote during the months of May and June, 1882, and who did not register, and for all other voters coming of age after that time who did not register during the period after their majority and next before the general election. Can there be any doubt about this? Let us see.

Section 94 of the General Statutes of 1882 provides:

> "When the said registration (manifestly the registration provided in section 93) shall have been completed, the book shall be closed and not reopened for registration, except for the purposes as hereinafter mentioned, until after the next general election for State officers. After the said next general election, the said books shall be reopened [this language presupposed that until then they remained closed] for registration of such persons as shall thereafter become entitled to vote." ["Thereafter."] "After the said general election."

This language, in as explicit a manner as possible, excludes those then entitled to register, but who had failed to register at the registration preceding such general election. This is manifest; for, if they were then entitled to register, they could not thereafter *become* entitled to register. That these provisions, taken together, exclude persons who failed to register at the time provided for their class to register, *e. g.*, those who, being qualified electors in 1882, failed to register at the registration of that year, and were intended to do so, seems plain from section 97:

> "Any person coming of age [not already of age] and becoming qualified as an elector [in the Revision of 1893 it reads: "Any person coming of age and otherwise qualified as an elector"] may appear before the supervisor of registration on any day on which the books were opened as aforesaid."

In what way can a man already of age and otherwise qualified as an elector be brought under these words?

Now, the act declares that when the registration of 1882 has been completed the books shall be closed, and shall not be reopened except to those who shall become entitled to register. Section 94 proceeds:

> "And ever after the said books shall be opened for registration of such electors [those thereafter becoming entitled to register] on the days above mentioned until the first day of July preceding a general election, when the same shall be closed as aforesaid until the said general election shall have taken place."

How much plainer can the intent to disfranchise and the actual effect of disfranchisement be made? Indeed, the act of '94 is a legislative declaration that the construction placed upon the act is and was the legislative intent.

The phrase "For the registration of such persons as shall thereafter become entitled to register" must be construed as excluding those then entitled to register, by force of the maxim, "*expressio unius exclusio alterius*." This maxim applies wherever an act contains general provisions, and also one upon a subject which, standing alone, the general provisions would include. In such cases, the special provisions upon that particular subject indicate an intention that it is not to be deemed included in the general provisions.

Endlich on Interpretation of Statutes, 560.

So, then, the undoubted result is (if, indeed, it was not clearly intended) that if a voter duly qualified during the months of May and June, 1882, did not register, it matters not what may have been the unavoidable causes of his failure, he is, by this act, not only denied his right of baliot for the election ensuing, to wit, in November, 1882, but he is disfranchised for all subsequent elections throughout the balance of his natural life; and so on, with every other voter who, coming of age thereafter and failing for any cause to register during this one period of grace—one opportunity and one failure means perpetual disfranchisement!

We have shown that disfranchisement for one election alone can not be sustained. *A fortiori*, it can not be sustained when it seeks permanent disfranchisement.

No State in the Union has yet undertaken so stupendous and sweeping an effort at the destruction of the ballot, under the forms of law.

Now, what of the act of 1894? Will it stand the test of constitutional inquiry?

We think not, and there is reason for the faith that is in us.

1. We, therefore, submit that it is void, because it is engrafted upon the general registration law, demonstrated to be in violation of the provisions of the Constitution; and being so interwoven with the old law it, too, must fall.

Sections 4, 6, 7, and 8 of the convention act of 1894 relate to registration.

Without the general act of 1882, these sections are unintelligible—but meaningless jargon.

Section 4, undertaking to prescribe the *qualifications* of electors for the purposes of the act, has the following:

> "and duly qualified to vote under the existing laws of the State and duly registered, as now required by law, or, who having been entitled to register as a voter at the general registration of electors in this State which took place in the year of our Lord 1882, or at any time subsequent thereto, failed to register at such time as required by law, or who has become a citizen of this State, and who shall register as hereinafter provided in such cases, shall be entitled to vote for delegates to said convention."

Section 6 likewise refers to and is dependent upon the old law for sense and support. We find expressions in it like these:

> "and also on the days now fixed by law for registration . . . and any elector having been heretofore duly registered, or having since changed his

residence or having lost his certificate, shall be entitled to have same transferred or renewed, as now provided by law."

Section Seven:

"Any elector who shall have been entitled to register, at the general registration in the year of our Lord, 1882, or at any time subsequent thereto, and who failed to register, at such time, as required by law," etc., etc., "such applicant shall be allowed to register as a voter, and to have issued to him a certificate as a duly qualified elector in the manner and form now required by law, etc."

Section Eight:

"No elector shall be entitled to vote whose name is not registered as hereinbefore, or already provided by law and who does not produce his registration certificate at the polls where he offers to vote."

Expunge from this act all reference to and dependence upon the old law—make it *the* Registration enactment of the State and you have a thing partial, incomplete and without rhyme, reason or sense—and standing alone to and by itself, but the skeleton of a house, upon a bank of sand!

Even if its own provisions are constitutional and valid, while the old law is void, the anomalous situation wonld be that the electors, soon to participate in the convention election, would be part registered under the old void law and part under the new valid law.

Like the Siamese twins they are one bone, one sinew, one flesh, one blood—one can not die and the other live.

2. It contains the *vicious* provisions and features of the old law, and if in consequence of their existence in the old, we have successfully challenged *its* constitutionality, then the new act can not be upheld.

All of the certificate features of the act of 1882 are recognized, ratified, and reaffirmed in the new, and section 8, *in haec verbis*, says that—

"no elector shall be entitled to vote whose name is not registered, as hereinbefore or already provided by law, and *who does not produce his registration certificate at the polls where he offers to vote.*"

Again, the registration specially provided for by this act commences on the 4th of March and ends on the 14th of March, closing the books, so far as special registration of the special act is concerned, one hundred and fifty-nine (159) days before the convention election.

But even if the old void law is invoked to help out the situation, then the books close on July 1, fifty-one (51) days before the election is to be held.

In other words, an allowance by the two acts combined, if you count every day possible, twenty (20) days within which to register *all* classes of electors, or but fourteen (14) days for the unregistered voters out of the lapse of two hundred and thirty-two (232) days from January 1 to the third Tuesday in August.

And yet it is seriously urged upon your honors that this enactment cures the defect; that it is reasonable; that it is no restraint upon the suffrage; that it does not destroy the ballot.

Away with such sophistry! Life is too short and time too fleeting to reason with such unreason. It is but a "sounding brass and a tinkling cymbal!"

3. Like the old law, it adds to the State and county residence qualifications of the elector, in contravention of section 2, article 8, of the constitution of the State.

Under sections 4, 6 and 7 registration is confined to parties coming into the State and "who has become a citizen of this State"—speaking unquestionably either of persons as being ("has become") citizens at the time of the passage of act in December, 1894, or at the time and during the registration period therein fixed—none of the sections of this or the old act contain the expression "or who shall *hereafter*

become qualified," or "*hereafter* become a citizen," or any words equivalent thereto.

The conclusion, therefore, can not be avoided, that no one moving into the State and unqualified at and during the *time* of *registration*, can register, notwithstanding the fact that such person or persons would thereafter, and before the *election*, become qualified.

The constitution requires residence in State one (1) year and in county in which one offers to vote sixty (60) days next preceding (not registration period, but) the *election* at which he desires to vote.

4. Like the old law it makes no provision whatever after the closing of the books for registration in the *interim* between that time and the election on August 20, or for the right of voting at the election of electors, sick or absent from the State, or for other sufficient reason, did not or could not register during the period of days, in said act allowed.

5. The provisions for allowing the unregistered and heretofore disfranchised electors ten (10) or thirteen (13) days within which to register, together with the conditions and requirements thereto attached, are themselves manifestly so obnoxious to the constitution that they *kill* instead of curing the original enactment.

Not having any constitutional warrant for permanently disfranchising voters for failure during the one period of grace allowed them—and having no legal or constitutional right, even under an otherwise valid registration law, to thus punish the unregistered with perpetual disfranchisement, the legislature had, in December last, no power, nor has it now any power, to require of the unregistered, burdensome and exacting conditions not imposed by law upon those heretofore registered.

Hard as were the requirements of the old law, they pale into insignificance when compared to the exactions of the new.

What is the unregistered unfortunate now required to do? Let us see.

(1) Must make affidavit, on form prepared by Attorney-General, setting forth—

> "full name, age, occupation and residence of the applicant at the time of the said general registration, or at any time thereafter when the said applicant became entitled to register, and the *place or places of his residence since the time when he became entitled to register.*

(2) His affidavit must be "supported by the *affidavit of two respectable citizens who are each of the age of twenty-one years*" on the 30th day of June, A. D. 1882, or at the time said applicant became entitled to register.

His affidavit must contain a diary of his acts and movements for two, four, six, eight, ten, maybe twelve years—that is an unnecessary and unreasonable requirement—it is no business of the registrar or the Government he represents, to make such inquiry or to require proof.

To elicit from the applicant such facts as will or may throw light upon the question whether he is qualified or disqualified, as an elector, is, as far as a registration, *bona fide* in character, can or will go.

To move one inch beyond that boundary is to impose upon the elector restraints, discouragements and burdens calculated to subvert his right of the ballot.

But that is the smallest part of this most remarkable requirement.

To require him to thus depose is stretching the province of registration far enough, but listen—he must submit in support of his own affidavit, affidavits of two others covering the same ground as that covered by his own—the two affiants supporting his statements, must be "reputable citizens"—reputable, pray, in whose opinion? In the judgment—the partisan, capricious judgment of the registrar, if you please!

But it is answered that no affidavit of a person not "reputable" should be received. But why is so much required of an elector already qualified under the Constitution, in order to have his name simply entered on the registry list.

After all, it furnishes him even when registered no conclusive evidence of the right to vote at the election. He may be, then and there challenged, if, as a matter of fact, he is *not* a qualified elector.

Reasonable, is it? Yet so much is not considered necessary, nor, indeed, is it required at the hands of the State in a murder, arson or rape case when the issue is the life of a human being.

Again, these two reputable affiants must have been twenty-one years of age in 1882, or when applicant arrived at the age of twenty-one.

In this star chamber court room, presided over by our autocratic master of the ballot, no minors need be offered as witnesses—they are without sufficient character or sense to deliver testimony upon issues so grave.

Indeed, your honors, it is far worse than that. Not only can minors not testify, but grown men, in the maturity of their years, can not be heard as witnesses if any of the long line of facts required became known to them during their minority.

An 1882 voter, unregistered, need not apply to the supervisor for this precious certificate unless he has two men at his side, not less than thirty-four years of age.

A witness for him, the best in the land, is turned down if he be only thirty or thirty-one, or thirty-two or thirty-three years of age.

Not only is the act—its registration sections—void for reasons just assigned, but it is not uniform—it discriminates as between two classes of electors—those now registered and those allowed to register under the new act.

No such testimony was required at the hands of the elector who has heretofore registered, and if he be allowed to vote without all these affidavits, *in extenso*, about his past acts and doings, there is no shadow of constitutional justification for this discriminating penalty and burden put upon the voter now unregistered.

6. The registration sections of the act are void because their subject matter is not covered by the subject matter of the act, nor is registration properly embraced in the title of the act.

The constitution of the State provides that all acts of assembly shall relate to but one subject, which shall be expressed in its title.

The defenders of this act must choose between one of two dilemmas, viz.: (1) That registration is *not* embraced in the title of the act, or, (2) that it comes under the expression to "define and prescribe the qualifications of electors."

If the former, that part of the act, in view of the explicit language of the constitution, must be inoperative and void—if latter, then the legislature declares in the title to the act that it is its purpose in said sections to define and prescribe the *qualifications* of electors.

We have already seen this would be *ultra vires* and void.

We submit, therefore, that the registration law of the State from the act of 1882 down to and including the act of 1894, viewing it as a whole, forces the fair and candid mind, without an act of volition, to the conclusion that the intent of the act was to utterly subvert the ballot, and that it has been an effective instrument for the accomplishment of the purposes for which it was designed and framed.

With all deference to Judge Simonton, it is respectfully submitted that the Supreme Court of South Carolina has not upheld the constitutionality of the registration law.

That question was elaborately presented to that tribunal in the case of Butler *vs.* Ellerbe, reported in 44th S. C., at page 256.

The action was brought by Senator M. C. Butler *vs.* The Comptroller General of the State, and it was sought thereby to enjoin the Comptroller from issuing warrants to pay the salaries of the Supervisors of the Registration, on the ground that the act creating that office was unconstitutional and void.

The syllabus of the case is as follows:

1. *Registration Laws—State—Parties.*

An action by a taxpayer to restrain the Comptroller General from issuing his warrants, and the State Treasurer from paying such warrants, for the salaries of officers of registration and election, provided for in the general appropriation act, on the ground that the registration laws of the State are unconstitutional, null, and void, is not an action against the State, nor is the State an indispensible party thereto.

Mr. Justice Gary dissenting.

2. *Statute—Constitutionality—Decision.*

An act of the legislature will not be declared unconstitutional where there are other grounds upon which the case can be fully disposed of.

3. *Ibid—Constitution—Equity—State—Estoppel.*—Per Gray, A. J.

The State would not be permitted to deny her liability for the salaries of her registration and election officers for services rendered by her direction on the plea that the registration law was unconstitutional; and, therefore, the court of equity will not, at the instance of a citizen and tax payer of the State, enjoin the fiscal officers of the State from paying the appropriation made by the legislature for such payments.

4. *Ibid—Ibid—Ibid—Ibid.*—Per Pope, A. J.

A court of equity, in action to enjoin the payment of appropriations made by the legislature for registration and election officers, will not grant the relief demanded, nor

consider the constitutionality of the registration laws, where the petition does not show that the petitioner, or any other person entitled, has been denied his rights of registration and voting.

5. *Equity—Legal Remedies.*—Per Pope, A. J.

Equity will not grant relief where there is a plain and adequate remedy at law, and therefore the petition for injunction in this case should be refused, as there are at least two remedies at law. Mr. Chief Justice McIver dissents.

6. *Registration Laws—Constitution.*

The question of the constitutionality of the registration laws of South Carolina, raised but not considered, except by Mr. Chief Justice McIver, who expressed the opinion that they were unconstitutional, because unreasonable in their requirements, and requiring of an elector more than the Constitution prescribed."

The dissenting opinion of Chief Justice McIver strongly presents the constitutional objections to the law, and it constitutes the only deliverance on that subject by the Supreme Court of South Carolina or by any member of that court.

But it may be said, that the attack so far made is from the point of view of the constitution of South Carolina; that it in no way violates the Constitution of the United States.

Whether or not the act in question is violative of specific articles of the Federal Constitution, it is unnecessary to discuss and decide.

If it can be established that the legislation attacked is in contravention of the provisions of the State constitution, and that by reason of such void legislation, the plaintiff in error has been illegally deprived of his right to vote for a member of the House of Representatives of the United States, then the question becomes Federal in its character, and as such, cognizable in the courts of the General Government.

Wiley is a citizen, both of the United States and of the State of South Carolina—a Federal and State elector, in one person.

He derives his citizenship from, and he owes his membership in the Federal electorate to the Constitution of the United States; he derives his citizenship and his rights as a State elector from the organic law of the State, and yet by the terms and provisions of the Federal Constitution, the qualifications of the State and Federal electors must at all times and under all circumstances be the same.

Section 2 of Article 1, of the Constitution of the United States provides that—

> "the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature."

The Supreme Court of the United States, in *Ex parte* Yarborough, 110 U. S. 652, referring to qualifications fixed by the State and the Constitution of the United States on the subject, says:

> "It adopts the qualifications thus furnished as the qualifications of its own electors for Members of Congress. It is not true, therefore, that electors for Members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right depend on the law of the State."

Referring to, and explaining decision and meaning of court in Miner *vs.* Happersett, 21 Wall. 162, Justic Miller, in *Ex parte* Yarborough, continues:

> "The Constitution adopts as the qualifications for voters for members of Congress that which prevails in the State where the voting is to be done; therefore, said the opinion, the right is not definitely conferred on any person or class of persons by the Constitution alone, because you have to look to the law of the State for the description of the class. But the court did not intend to say that when the

> class or the person is thus ascertained, his right to vote for a member of Congress was not fundamentally based upon the Constitution, which created the office of member of Congress, and declared it should be elective, and pointed out the means of ascertaining who should be electors."

By this provision, the Constitution of the United States adopts the State qualifications; and in effect, the qualifications of State electors for South Carolina has been inserted into the Constitution of the United States as a subdivision, so to speak, of said Section 2 of Article 1, after this manner: in the State of South Carolina, the qualifications for electors for members of Congress shall be as follows, that is to say: and then insert the qualifications of State elector existent in South Carolina *verbatim* as they are shown and set forth in the constitution of that State.

And as the qualifications of State electors are purely and exclusively constitutional—not statutory—the provisions of the South Carolina constitution would, in effect, be set out in the Federal instrument, as descriptive of the qualifications of the Federal electors for that State.

This seems to us to be a fair and accurate statement of the situation, as it is.

It would follow, therefore, that any act of assembly in violation of the provisions of the State constitution and in contravention of the constitutional rights of a State elector would, *ipso facto*, be equally void as against the Federal electorate—as in violation of the qualifications therein fixed and in effect embodied in the Constitution of the United States.

It would follow, again, that as the State makes the qualifications in the first instance and the United States Constitution simultaneously adopts them, having so contracted to do in its organic law from the foundation of the Government—that a convention of the people of the State duly called with power to abridge or enlarge the qualifications of

its own electorate has the power to change the qualifications of the Federal electorate.

And whether or not such would be the intent and purpose of a convention of the people of the State, any constitutional enactment by such convention upon the suffrage rights of the State elector, yet in the doing so the direct, proximate result, certain, sure, inevitable, is: that the Federal electorate is changed (whether abridged or enlarged) at the same moment of time, in the same manner and to the same extent as that done and affected concerning the State electorate.

Bearing in mind, therefore, that the Government of this country is dual in character (State and Federal) and in consequence, to some extent complex, the citizen has the dual character of a Federal and State elector in one and the same person—the one character he derives from one Constitution, the other from another.

In the language of the Supreme Court:

> "It is the duty of the States to elect representatives in Congress . . . the Government of the United States is no less concerned in the transaction than the State government is.
>
> "It certainly is not bound to stand by as a passive spectator when duties are violated and outrageous frauds committed. . . . Those duties are owed as well to the United States as to the State.
>
> "This necessarily follows from the mixed character of the transaction—State and National . . . the objection that the laws and regulations, the violation of which is made punishable by the act of Congress, are State laws and have not been adopted by Congress, is not sufficient answer to power of Congress to impose punishment. . . .
>
> "The State laws which Congress sees no occasion to alter, but which it allows to stand, are in effect adopted by Congress.
>
> "It simply demands their fulfillment."
>
> Ex parte Siebold, 100 U. S. 388.

There can be no stronger statement here than in the concluding words of Justice Miller in *Ex parte* Yarborough. He said:

> "If the Government of the United States has within its Constitutional domain no authority to provide against these evils, if the very sources of power may be poisoned by corruption or controlled by violence and outrage, without legal restraint, then, indeed, is the country in danger, and its best powers, its highest purposes, the hopes which it inspires, and the love which enshrines it, are at the mercy of the combinations of those who respect no right but brute force, on the one hand, and unprincipled corruptionists on the other."

But it may be said that the registration enactments herein attacked have been so materially altered by the State constitution of 1895 and the act of Assembly approved March 5, 1896, that the questions raised as to the constitutional integrity of the acts of '82 and '94 are no longer living issues.

We answer that the tortious act complained of by the plaintiff in error was committed while the acts of '82 and '94 were upon the statute books, and consequently before the ratification of the new constitution of 1895 and the later enactment of March 5, 1896.

It follows, therefore, that the issues in this cause must be determined by the law *then* in force.

Again, it may be suggested, in conclusion, that the provisions of the new constitution and of the new registration law will be found, upon close scrutiny, to contain many of the objectionable features pointed out in the old law, but the issues as to the new law that may arise, upon a proper case made, are not for us to suggest or argue, nor for this court, in this cause, to consider and adjudicate.

CHAS. A. DOUGLASS,
Attorney for Plaintiff in Error.

No. 7
Brief of Barber for D. C.
Filed Oct. 11, 1898.

BRIEF FOR APPELLEES.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1898.

No. 7.

DANIEL WILEY, PLAINTIFF IN ERROR,

vs.

D. L. SINKLER, T. D. LANIGAN, AND BENJAMIN ELFE.

In Error from the Circuit Court of the United States for the District of South Carolina.

BRIEF OF WILLIAM A. BARBER,
Attorney General for South Carolina,
Counsel for Appellees.

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STATEMENT OF CASE.

his was an action brought by the plaintiff in error against defendants in error in the Circuit Court of the United States, he recovery of damages against them for wilfully refusing lection officers to allow plaintiff in error to vote in an election Congressman.

he defendants in error interposed an oral demurrer to the plaint upon two grounds:

That the Court had no jurisdiction of the action.

I. That the complaint does not state facts sufficient to con-ute a cause of action.

t the hearing the Circuit Judge sustained the demurrer on second ground, and did not consider the first ground. The

contention is that the Circuit Judge did not err in sustaining the demurrer on the ground stated in his judgment, and that it was also sustainable on the first ground.

ARGUMENT.

First Proposition.

Objection was taken to the complaint by oral demurrer, in accordance with the practice of the State Court under the Code of Procedure.

Section 164 of South Carolina Code: "The only pleading on the part of the defendant is either a demurrer or answer."

Section 165: "The defendant may demur to the complaint when it shall appear upon the face thereof either

"1. That the Court has no jurisdiction of the person of defendant or the subject of the action; or

"2. That the plaintiff has not legal capacity to sue; or

"3. That there is another action pending between the same parties for the same cause; or

"4. That there is a defect of parties plaintiff or defendant; or

"5. That several causes of action have been improperly united; or

"6. That the complaint does not state facts sufficient to constitute a cause of action."

Section 168: "When any of the matters enumerated in Section 195 do not appear upon the face of the complaint, the objection may be taken by answer."

Section 169: "If no such objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the Court, and the objection that the complaint does not state facts sufficient to constitute a cause of action."

Rule 18 of the Rules of Practice for Circuit Courts in South Carolina is as follows:

"A motion to dismiss a complaint on the ground that the complaint does not state facts sufficient to constitute a cause of action, or the answer does not state facts sufficient to constitute a cause

of action, must be in writing, stating wherein the pleading objected to is insufficient."

All other defects, except want of jurisdiction and sufficient statement of facts, are cured by failure to object by demurrer and answer.

Daniels v. *Moses*, 12 S. C., 130.

Objection that complaint does not state facts sufficient to constitute a cause of action may be made orally at any stage of the proceedings.

Hull v. *Young*, 29 S. C., 64.

An objection to the jurisdiction of the Court below, although raised for the first time in the Supreme Court, must be considered and determined.

State v. *Penney*, 19 S. C., 224.

A question of jurisdiction may be raised at any time.

Seigler v. *Coward*, 24 S. C., 122.

Oral demurrer for want of facts in the complaint may be interposed after answer filed.

Booker v. *Smith*, 38 S. C., 228.

Second Proposition.

The Circuit Court had no jurisdiction of this action. The Acts of Congress and State laws provide for the punishment of election officers by indictment, and the United States and State Courts have concurrent jurisdiction. In South Carolina the common law doctrine that a voter who has been denied the right to vote by election officers can bring an action against them for damages has never been adopted; and if no action can be maintained in the State Court, none will lie in the United States Circuit Court.

Section 4, article 1, of U. S. Constitution is as follows: "The times, places, and manners of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the place of choosing Senators."

Under this section, the State may make regulations on the subject; Congress may make regulations on the same subject, or

may alter or add to those already made. The paramount character of those made by Congress has the effect to supersede those made by the State, so far as the two are inconsistent, and no further.

Ex parte Siebold, 100 U. S., 386.

Congress has partially regulated the subject of the election of members of Congress. It has provided for the election of Representatives by separate districts; that they shall be elected by ballot; and has also fixed the time of election; and by Sections 5511 to 5514, inclusive, for punishment of fraudulent voting for Representatives, for fraudulent registration, and for violation of duty by election officers in the States.

The States have provided by legislation for all other matters pertaining to registration and holding elections for Representatives, and the same provisions apply to the registration and holding elections for all State and County officers.

When Congress has thus legislated, it is paramount, and supersedes all State legislation; when it has not, the legislation of the States is the law, under the Constitution of the United States.

The effect of the provisions of Sections 5511 to 5514, inclusive, is to give to the United States Court jurisdiction over the officers of the State appointed to carry out the registration laws of the State, and to hold the elections for members of Congress, and they can be punished under the Statutes of the United States for any violation of them by the United States Courts, as well as in the State Courts for violations of the State laws. These sections were intended for the security and protection of elections held for Representatives or Delegates in Congress, but do not impair or restrict the power of the State to punish fraudulent voting in the choice of its electors.

In case of *Ex parte Siebold*, *supra*, the Justice says: "As a general proposition, it is true that Congress has no power to enforce State laws, or to punish State officers for violation of State laws; but when, in the performance of their functions, State officers are called upon to fulfill duties which they owe to the United States as well as the States, has the former no means of compelling such fulfillment? It is the duty of the States to elect Representatives to Congress. The due and fair election of them

is of vital importance to the United States. It is, then, directly interested in the faithful performance by the officers of election of their respective duties. A violation of duty is an offense against the United States, for which the offender is justly amenable to that government. No official position can shelter him from that responsibility. The objection that the laws which are made punishable by Acts of Congress are State laws, and have not been adopted by Congress, is no answer to the power of Congress to impose punishment. It has created additional sanctions for the performance of duties imposed upon ordinary officers of elections, and the imposition of punishment implies a prohibition of the act punished. The State laws which Congress sees no occasion to alter, but which it allows to stand, are in effect adopted by Congress. Content to have the laws as they are, it is not content with the means provided for their enforcement. It provides additional means for that purpose. It is simply the exercise of the power to make additional regulations."

In *Ex parte Coy*, 127 U. S., 731, the Justice says: "It is, perhaps, past debate that Congress has the power under the Constitution to adopt the laws of the several States respecting the mode of electing the members of Congress, and, as resulting from that power, the right to prescribe punishment for the infractions of the law so adopted. This Court has held more than once that Congress has exercised this power, and has adopted these laws, and with them the officers created under them, making them, for the purpose of the election of members of Congress, its officers, and has added new sanctions to such laws, and subjected such officers to the penalties of these sanctions."

Notwithstanding these decisions, it has not been decided that the Courts of the United States have exclusive jurisdiction for violations of Acts of Congress by election officers of the States in elections for Representatives in Congress.

In the case *In re Green*, 134 U. S., 378, the Justice, delivering the opinion of the Court, says: "The question whether the State has concurrent power with the United States to punish fraudulent voting for Representatives in Congress is not presented by the record before us." *It may be that it has*, and reference is made to the case of *Ex parte Siebold*, *supra*. In this same case

it was held that the State has concurrent power with the United States to punish fraudulent voting for Electors for President.

If it has concurrent power in the one, it clearly has in the other case. The reasoning in the case of *Ex parte Siebold*, *supra*, irresistibly leads to this conclusion.

If the State has concurrent jurisdiction with the United States Courts in violations of the Sections of Revised Statutes of U. S., 5511 to 5514, inclusive, the question arises, *can an action for damages be maintained in the U. S. Courts?* There can be no doubt about criminal actions being instituted in the U. S. Courts.

Section 5515 and other sections of Revised Statutes of U. S. only authorize criminal actions against officers of election for violation of election or registration laws. They make it a criminal offense alone, and no express authority is given to a voter to institute an action for damages, and none by implication.

Section 244 of Revised Statutes of S. C. is as follows: "If any officer, on whom any duty is enjoined in Chapters 10, 11, and 12 of part 1 of these Statutes, shall be guilty of any wilful neglect of such duty, or of any corrupt conduct in the execution of the same, and be thereof convicted, he shall be deemed guilty of a misdemeanor, punishable by fine not exceeding $500, or imprisonment not exceeding one year."

The State Statute also declares any violation of the registration or election laws a misdemeanor, and does not expressly authorize any action by the voter against the offending officers for damages.

I maintain, then, that no action can be instituted in the State Court by a voter against Managers of Election for damages, for wilful neglect of duty, or for wilfully and corruptly denying him the right to vote. No case can be found in the State Reports. The only remedy has been by indictment and mandamus, and, therefore, the common law remedy of action for damages has never been recognized or allowed in the Courts.

In some of the States, an action on the case has been held to lie against Managers of Election for wilfully and corruptly refusing the vote of a qualified elector, on proof of malice, express or implied.

The leading case is that of *Jenkins* v. *Waldron*, 11 Johnson

(N. Y.), 114. This case is based upon the doctrine laid down in the English case of *Ashby* v. *White*, 2 Ld. Rayn., 938. Justice Spencer, in delivering the opinion, in *Jenkins* v. *Waldron*, says: "The principal case relied on by counsel is that of *Ashby* v. *White*. There the declaration alleged that the rejection of Ashby's vote was done fraudulently and maliciously, and, although the jury found the defendant guilty, the judgment was arrested. This judgment was afterwards reversed in the House of Lords. The first resolution of the Lords states, 'that by the known laws of this kingdom, any freeholder or other person having the right to give his vote at the election of members to serve in Parliament, and being wilfully denied or hindered to do so by the officer who ought to receive the same, may maintain an action in the Queen's Court against such officer, to assert his right and to recover damages for the injury.' The case of *Harrison* v. *Tappenden*, 1 East., 555, clearly shows that this action is not maintainable without stating and proving malice, express or implied, on the part of the officers. In the case in the text, Lawrence, J., said there is no instance of an action of this sort maintained for an act arising from merely error of judgment."

Brightly's Leading Cases on Election, p. 192.

McCrary on Elections, Section 494, says: "The general rule is, that an officer of election, or of registration, who shall wilfully and corruptly refuse to any citizen who is duly qualified the right to vote or register, is liable in damages to the person injured. In several of the States it is regarded as sufficient to show that the plaintiff has been unlawfully deprived of his right, without proof of a malicious or corrupt purpose on the part of the officer; but the general doctrine is as above stated. In those States where no proof of malice is necessary, the plaintiff must allege and prove that he furnished defendants with sufficient evidence of his having the legal qualifications of a voter before defendants refused to receive his vote. This decision comes almost up to the rule as it exists in most of the other States; because if the voter furnished sufficient evidence of his right, that fact would go far to prove wilfulness on the part of the officer who, in the face of such evidence, refuses him the privilege of voting."

The same author says: "That the Massachusetts rule is regarded rather as one for the determination and settlement of the plaintiff's right to vote than as a suit to recover damages." The Massachusetts rule has been followed only in the States of Ohio and Wisconsin.

McCrary on Elections, Sec. 496.

"The weight of authority that malice must be alleged and proved in an action against an election officer is decidedly the other way."

McCrary on Elections, Sec. 496.

The New York rule has been adopted in New Hampshire, Delaware, Pennsylvania, Indiana, Maryland, Tennessee, and other States.

McCrary on Elections, Sec. 496.

Brightly on Elections, p. 193.

So that the common law doctrine, as adopted in New York and a few other of the States, is, that an action may be maintained by a citizen against an election officer, but he cannot recover unless he alleges that the officer acted wilfully and corruptly, and proves malice, either express or implied.

In Maryland it has been held that a citizen cannot bring an action against election officers, as it is *damnum absque injuria*.

Bevard v. *Hoffman*, 18 Md., 483.

Anderson v. *Baker*, 23 Md., 531.

In the case of *State* v. *Watson*, 2 Speer (S. C.), 97, it was held that "Mandamus is the proper remedy when there is no other appropriate legal remedy for the enforcement of a legal right."

In the case of *The State* v. *Managers of Election for York County*, 1 Bailey, 215, the question of a citizen's right to vote was tested by mandamus, and the Court considered the remedy an appropriate one.

In case of *The State* v. *Bruce et al.*, 3 Brevard, 272, the Justice delivering the opinion said: "The office of Manager of Election is one which deeply affects the interests of society, and, if any one will accept the office, he must take care to act according to law, and according to his best ability and knowledge. If he will not do so, the Courts of General Sessions have the power, and it is the duty of those Courts, to coerce him and compel

obedience to law." In this case the Court did say: "That a party elected to an office could maintain an action against Managers making a false return; and where no person interested would maintain an action, then the Court will grant an indictment against the person making the false return." This was *obiter*, as no question was raised. Not a case can be found in the Reports of South Carolina where a voter ever brought an action against election officers for damages, and the common law right to bring an action in such cases has been abrogated by the judicial policy of the State.

If the action does not lie in the State Courts, it cannot be contended that it will lie in the United States Court, on the ground that Congress has adopted all State laws by its Statutes punishing officers of election, and that voters are entitled to all rights in the United States Court they are entitled to in the State Courts, by reason of concurrent jurisdiction.

But the Act of Congress, Section 2008, Revised Statutes of United States, provides the civil remedy in a case where a voter has been deprived of the right to vote, and prescribes the penalty and its mode of recovery. It is as follows: "Every judge, inspector, or other officer of election, whose duty it is to receive, count, certify, register, report or give effect to the vote of such citizen, who wrongfully refuses or omits to receive, count, certify, register, report or give effect to the vote of such citizen, upon the presentation by him of his affidavit, stating such offer, and the time and place thereof, and the name of the officer or person whose duty it was to act thereon, and that he was wrongfully prevented by such person or officer from performing such act, shall forfeit the sum of $500 to the party aggrieved by such refusal or omission, to be recovered by an action on the case, with costs, and such allowance for counsel fees as the Court may deem just."

An action must be brought to recover the penalty, and not for damages for the injury—and it must be brought under the Statute.

Where a particular form of action is authorized by Statute, no other can be maintained except that allowed by Statute, and par-

ticularly in the United States Courts, which have no common law powers and jurisdiction.

When a new remedy is given by Statute, plaintiff who would avail himself of it must bring himself within the Statute.

Lowden v. *Moses*, 1 McC. (S. C.), 120.

Love v. *Lowry*, 1 McC., 181.

When a Statute authorizes a proceeding not before allowed by law, and prescribes the mode in which it shall be done, the mode pointed out must be strictly pursued.

Monk v. *Jenkins*, 2 Hill, 575.

When a new jurisdiction is given to, or a new remedy offered by, common law court, neither can be extended beyond legislative grant.

Pringle v. *Carter*, 1 Hill, 53.

This case is brought for damages, and not for the recovery of a penalty as authorized by the Statute.

There is quite a difference between the two actions—one is an action for tort, and the other of debt to recover a penalty.

In *Kennedy* v. *Garlington*, Harper L. (S. C.), 273, the Justice delivering the opinion says: "It does not appear from the process in this case, whether trespass or debt was intended to be brought; and this should appear, to enable defendant to shape his defense. Although the same strictness may not be required in a summons process as in a declaration, yet the cause of action must not be so informally stated as to leave it doubtful whether the plaintiff was suing for a penalty given by Statute or for damages in trespass."

The demurrer to the summons was sustained on the ground stated.

It cannot be successfully contended that the 14th Amendment of the U. S. Constitution, and section 1979 of Revised Statutes of U. S., passed to carry into effect this amendment, confers the right upon the plaintiff to bring this action.

The 14th Amendment prohibits a State from depriving any person of life, liberty or property, without due process of law, and from denying to any person within its jurisdiction, the equal protection of the laws; but it adds nothing to the rights of one citizen against another. It simply furnishes an additional guar-

antee against any encroachment by the States upon the fundamental rights which belong to every citizen as a member of society. The duty of protecting all its citizens in the enjoyment of an equality of rights, was originally assumed by the States, and it still remains there. The only obligation resting upon the United States is to see that the States do not deny the right. This the 14th Amendment guarantees, *but no more*. The power of the National Government is limited to the enforcement of this guaranty.

U. S. v. *Reese et al.*, 92 U. S., 214.

U. S. v. *Cruikshanks*, 92 U. S., 542.

Slaughter House Cases, 16 Wall., 73.

The Constitution of the United States has not conferred the right of suffrage upon any one, and the United States have no voters *of their own*.

Nor can it be contended that under the 15th Amendment of the Constitution of the U. S., the plaintiff has the right to bring this action.

The 15th Amendment only operates to prevent the States or the United States from discriminating against a voter on account of race, color or previous condition of servitude.

U. S. v. *Cruikshanks*, *supra*.

The power of Congress to legislate at all upon the subject of voting at State elections, is derived from the 15th Amendment.

The State has not enacted any laws in contravention of the 14th or 15th Amendments, and no person can claim any rights under either of them, unless there has been State legislation contravening them. They add nothing to the rights of one citizen as against another. Hence, this plaintiff derives no authority from the amendments to bring this action.

In his complaint, the plaintiff does not claim that the Court has jurisdiction by virtue of either of these amendments.

To give this Court jurisdiction, it must affirmatively appear upon the face of the complaint. He does not allege that he was deprived of the right to vote by the defendant under the color of any law which was in contravention of the Constitution and laws of the United States.

Turner v. *Union and Planters Bank*, 152 U. S., 461.

Third Proposition.

The complaint does not state facts sufficient to constitute a cause of action, and the Circuit Judge did not err in sustaining demurrer on this ground.

Section 163 of Code of South Carolina is as follows:

"A complaint shall contain a plain and concise statement of facts constituting a cause of action, without unnecessary repetition."

In construing this section, the Supreme Court of South Carolina held, in case of *Chalmers* v. *Glenn*, 18 S. C., 481: "Thus generally it may be said that a cause of action exists when the legal rights of one party are invaded by another. It follows, therefore, that he (the plaintiff) must allege in his complaint all the facts showing his right, and also showing its invasion by the defendant; and the facts thus alleged must in law, upon their face on the one side, entitle him to the right which he claims, and on the other amount to an invasion by the defendant."

The wrong complained of, and which plaintiff seeks to have redressed, is, that he had the right to vote, and was wilfully and maliciously denied this right by defendants.

The facts necessary to be stated to redress the wrong in the State Court (if the Court had jurisdiction) are:

I. That the plaintiff was entitled to vote at the Congressional election in South Carolina.

II. That the defendants wilfully and maliciously denied to him this right to his injury.

III. That the acts were committed within the jurisdiction of the Court.

As before stated, if the Court has jurisdiction, the plaintiff cannot recover, unless he alleges that the election officers acted wilfully and corruptly, and proves malice.

There is an allegation in the complaint that the defendants "unlawfully, wilfully, and injuriously refused to permit plaintiff to vote," &c. This is not sufficient.

In the case of *State* v. *Alexander*, 14 Rich. (S. C.), 247, held: "An offense that is both wilful and malicious contains an ingredient which is not to be found in one that is unlawful merely."

The words employed in the complaint do not imply anything

like malice and corruption, and there must be an allegation in apt words to express this idea.

But this action is brought in the United States Circuit Court. In order to give it jurisdiction, it must be stated that the action arises under the Constitution or laws of the United States, and it must be made to appear on the record that some right, title, privilege or immunity on which the remedy depends has been denied him, under the color of State laws, in contravention of the Constitution of the United States.

"The bare averment of a Federal question is not sufficient."

N. O. Water Works Co. v. *New Orleans*, 142 U. S., 79.

"A real and not a fictitious Federal question is essential to the jurisdiction of the Court."

Hamblin v. *Land Co.*, 147 U. S., 532.

In the case of *Murphy* v. *Ramsay*, 114 U. S., 37, which was an action brought by a voter against election officers for damages, a demurrer was interposed to the complaint on the ground that the complaint did not state facts sufficient to constitute a cause of action. The Court said:

"The cases as to the other defendants, the registration officers, stand on different principles. If they were merely ministerial officers, and if they have deprived the respective plaintiffs of their rights to be registered as voters, in violation of law, they may be responsible in an action for damages. Whether they are so, must depend, in the first instance, not upon what they have done or omitted, but upon the question whether the plaintiffs have severally shown themselves entitled to the right of which, it is alleged, they were illegally deprived.

"And in entering upon the consideration of this point, it is to be observed, in the first place, that the pleader has not in any of the complaints alleged, as a matter of fact, that the plaintiff was a legally qualified voter, entitled to be registered as such. He has preferred, in each case, with variations to suit the circumstances, to aver the existence of specific enumerated qualifications, and the absence of specific and enumerated disqualifications, leaving it to be inferred, as a matter of law, that the plaintiff was a legally qualified voter, and entitled to be registered as such. That legal inference is necessary to complete the case

as stated; and the sufficiency of the statement must depend on whether all the positive qualifications required by law are alleged to have existed, and all the disqualifications affixed by law have been negatived.

"To ascertain this, we have to compare the allegations of the complaint in each case with the requisitions of the law, and, by construction, to determine whether they conform."

So in the case at bar, the sufficiency of the allegations must be determined by the requirements of the law of South Carolina.

Section 3, Article 8, of the Constitution of South Carolina is as follows:

"It shall be the duty of the General Assembly to provide, from time to time, for the registration of voters."

Section 132 of Revised Statutes of South Carolina, 1893, is as follows:

"All electors of the State shall be registered; and no person shall be allowed to vote at any election hereafter to be held unless he shall have been heretofore registered in conformity with the requirements of Chapter VII. of the General Statutes of 1882, and Acts amendatory thereto, or shall be registered as herein required."

Registration was a positive qualification required by law, and it should, therefore, have been alleged in the complaint against defendants as Managers of Election that the plaintiff was registered, even if the action was such an one as could be brought in the State Court.

The complaint is insufficient in statement of facts and form, in that it is an action in trespass for the recovery of damages for a wilful injury, and is not in accordance with the Act authorizing a civil action in this Court for the denial to a voter of the right to vote.

The action authorized is an action of debt for the recovery of a penalty. This kind of an action is essentially different from an action for trespass, and the complaint, therefore, does not state facts sufficient to constitute a cause of action under Section 2008 of Revised Statutes of United States.

Kennedy v. *Garlington*, *supra*.

Lowden v. *Moses*, 1 McC., 120.

Pringle v. *Carter*, 1 Hill, 53.

See *Seely* v. *Knox*, 2 Woods (U. S.), 368, where it is held: "The facts necessary to be stated, in a declaration under the Statute to recover the forfeit, must be such as would authorize a conviction in a criminal prosecution under the section. If it had been averred that the defendant wilfully and maliciously or corruptly decided against the plaintiff's right to vote, well knowing he had such right, and thereby prevented him from voting, it is possible the declaration might be sustained." The case cited in Woods R. was an action on the case to recover the forfeit of $500, provided for in section of Acts of Congress.

The complaint in this case does not allege that the penalty is sought to be recovered under any particular Statute, and does not ask judgment for the recovery of a penalty of $500, but $2,500 damages for a trespass.

So that it makes no difference if the officer is charged in the complaint with having wilfully or corruptly denied plaintiff's right to vote, then it would not be sufficient, because the action is for trespass and not for the recovery of a penalty under Statute.

The whole frame-work of the complaint shows that it was not intended to be an action for a penalty, but an action for trespass, and it does not, therefore, state facts sufficient to constitute such an action as is authorized by the Statute.

Fourth Proposition.

It is contended that it is not necessary, as held by the Circuit Judge, that the complaint should contain an allegation that the plaintiff was a registered voter, because the registration law of South Carolina then in force was unconstitutional. It is respectfully submitted that such law was constitutional.

It may be well to observe that the Constitutional Convention of South Carolina adopted a new Constitution, which went into effect on the 31st day of December, A. D. 1895, and that in pursuance of its requirements, the General Assembly at its session of 1896, passed a new registration law which repealed the law in force at the time this action was instituted.

The following is the provision of the Constitution of 1868 as to registration of voters: Section 3, Article 8:

"It shall be the duty of the General Assembly to provide from time to time for the registration of voters."

In pursuance of this requirement, the General Assembly passed the registration law.

I maintain that:

I. That the right of suffrage comes from the State and from the State alone, and is not a vested right.

II. That the qualifications for the exercise of the right are to be determined by the sovereign power of the State in its discretion, save only as same is affected by the amendments to the Constitution of the United States.

III. That amendments to the Constitution of the United States are limited solely to a discrimination on account of race, color or previous condition of servitude (15th Amendment).

IV. That if the law itself does not discriminate in terms, that the law is valid, though officials may actually discriminate.

V. That discrimination alleged in any individual acts by the Supervisor [redacted] is a matter to be redressed only by making the same a ground of exception, and thereby make the same a Federal question for the decision of the appellate tribunal in determining the right of the suitor to vote under the qualifications fixed by the Constitution.

VI. That the Act of Congress of 1868, assuming that the State of South Carolina was not a member of the Federal Union, and prescribing qualifications and conditions for the re-entry of such State into the Federal Union, was null and void under the Constitution of the United States, on the ground that, in the eye of the law, the State of South Carolina never dissolved her relations to the Federal Union, was always a member thereof, and no conditions could be named by Congress for re-entry.

VII. Again, the Act of Congress of 1868 is void in that it prescribes special conditions for three States named therein, and was not a uniform system obtaining throughout the Federal Union.

VIII. Again, the Act of Congress of 1868 was void in that it assumed to determine and fix in the action of the State qualifications and conditions of suffrage which, under the Constitution of

the United States, were subject only to the constitutional regulations contained in the United States Constitution.

IX. Again, the Act of Congress of 1868 is void in that Congress assumed to exercise legislative power outside the constitutional domain committed to it by the Constitution of the United States, in that it made a condition of re-entry or continuance as a State of the Federal Union rights of suffrage in individual States over which, under the Constitution of the United States, the legislative power of Congress did not extend.

X. Again, the Government of the United States, being a limited Government, as defined by the Constitution, powers of Congress being therein expressed, the Act of Congress of 1868 is void as being outside of any express power given to Congress under the Constitution of the United States.

Murphy v. *Ramsey*, 114 U. S., 44, 45.
Ex Parte Yarborough, 110 U. S., 664–5.
Bradwell v. *Ill.*, 16 Wall., 130.
Slaughter House Cases, 16 Wall., 36, 37.
Minor v. *Happersett*, 21 Wall., 162, 175.
Elk v. *Wilkins*, 112 U. S., 94, 101, 102.
U. S. v. *Cruikshanks*, 92 U. S., 542.
U. S. v. *Reese*, 92 U. S., 215.
Strauder v. *W. Virginia*, 100 U. S., 303.
Ex Parte Virginia, 100 U. S., 303.
Bowman v. *Lewis*, 101 U. S., 22.
Neal v. *Delaware*, 103 U. S., 370.
Bush v. *Kentucky*, 107 U. S., 110.
In re Shibuya Jugiro, 140 U. S., 291, 297.
In re Wood, 140 U. S., 278, 282, 284.
Gunn v. *Barry*, 15 Wall., 622, 623.
Texas v. *White*, 7 Wall., 700.
Mississippi Case, MMS. Dec., 1898.

As a matter of fact, the law of South Carolina, so far from discriminating, expressly declares that there shall be no discrimination on account of race, color or previous condition. Section 131 of Revised Statutes of South Carolina provides: "Every male citizen of the United States of the age of twenty-one years and upwards, not laboring under the disabilities named

in the Constitution, without distinction of race, color or previous condition, who shall have resided in the State for one year, and in the county in which he offers to vote for sixty days next preceeding any general election, shall be entitled to vote: *Provided*, That no person while kept in any alms-house or asylum or of unsound mind, or confined in any public prison, or who shall have been convicted of treason, murder, burglary, larceny, perjury, forgery or any other infamous crime or duelling, shall be allowed to vote."

See Section 132, hereinbefore quoted, requiring registration as a qualification for voting.

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No. 4.

Brief of Barber for D. E.

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Supreme Court of the United States.

OCTOBER TERM, 1899,
No. 4.

DANIEL WILEY,
Plaintiff in Error,

vs.

L. SINKLER, T. D. LANIGAN AND BENJAMIN ELFE,

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

BRIEF FOR DEFENDANTS IN ERROR.

WILLIAM A. BARBER,
Attorney for Defendants in Error.

The Evening Post Job Printing House, New York.

Supreme Court of the United States,

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vs.

D. L. SINKLER, T. D. LANIGAN and BENJAMIN ELFE.

In Error to the Circuit Court of the United States for the District of South Carolina.

BRIEF FOR DEFENDANTS IN ERROR.

Statement.

The plaintiff in error and the defendants in error are all citizens of the State of South Carolina. On the 11th day of March, 1895, the plaintiff in error filed in the Circuit Court of the United States a complaint against the defendants in error, seeking to recover against them damages for an alleged refusal on their part, while they were acting as managers of election, to allow plaintiff in error to vote in an election, held on the sixth day of November,

1894, for member of the House of Representatives of the United States. The defendants in error duly filed their answer to the complaint.

When the case was called for hearing the defendants interposed an oral demurrer on two grounds: First, That the Court had no jurisdiction of the case. Second, That the complaint did not state facts sufficient to constitute a cause of action. After hearing argument, the Circuit Judge sustained the demurrer on the second ground and did not consider the first. The plaintiff in error filed seventeen assignments of error, upon which the case was brought to this Court.

ARGUMENT.

Objection to the complaint by oral demurrer was taken in accordance with the practice under the Code of Procedure of South Carolina and the rules of the Circuit Court in that State.

Section 164 of the South Carolina Code: "The only pleading on the part of the defendant is either a demurrer or answer."

Section 165: The defendant may demur to the complaint when it shall appear upon the face thereof either:

I.—That the Court has no jurisdiction of the person of defendant or the subject of the action; or

II.—That the plaintiff has not legal capacity to sue; or

III.—That there is another action pending between the same parties for the same cause; or

IV.—That there is a defect of parties plaintiff or defendant; or

V.—That several causes of action have been improperly united; or

VI.—That the complaint does not state facts sufficient to constitute a cause of action.

Section 168: When any of the matters enumerated in Section 195 do not appear upon the face of the complaint, the objection may be taken by answer.

Section 169: If no such objection be taken either by demurrer or answer, the defendant shall be deemed to have waived the same, excepting only the objection to the jurisdiction of the Court, and the objection that the complaint does not state facts sufficient to constitute a cause of action.

Rule 18 of the Rules of Practice for Circuit Court in South Carolina is as follows:

"A motion to dismiss a complaint on the ground that the complaint does not state facts sufficient to constitute a cause of action, or the answer does not state facts sufficient to constitute a cause of action, must be in writing, stating wherein the pleading objected to is insufficient."

In the outset the attention of the Court is called to the fact that Sections 5311 and 5514 inclusive, Revised Statutes of the United States, as well as Section 2008 of the said statutes, have been expressly repealed by the Act of Congress of February 8, 1894 (statutes of 1893, 1894, Chapter XXV., p. 36). Therefore, so much of the briefs heretofore filed as refers to these sections can have no bearing on the decision of this case, and the principles governing it must be found elsewhere.

FIRST PROPOSITION.

The Circuit Court is without jurisdiction, because no federal question appears on the face of the complaint.

This ground of demurrer was not considered by the Court below, but as it is incumbent upon this Court to inquire into the jurisdiction in all cases, it is deemed proper to discuss it. Jurisdiction must appear affirmatively upon the record.

In the case of Parker *v.* Ormsby, 141 U. S., this rule was again stated by the Court. Mr. Justice Harlan delivering the opinion says: "Did the Court below have jurisdiction of this case? If jurisdiction did not affirmatively appear upon the record, it was error to have rendered a decree, whether the question of jurisdiction was raised or not in the Court below. In the exercise of its power, this Court, of its own motion, must deny the jurisdiction of the Courts of the United States, in all cases coming before it, upon writ of error or appeal, where such jurisdiction does not affirmatively appear in the record on which it is called to act" (*Mansfield C. & L. M. R. R. Co.* v. *Swan*, 111 *U. S.*, 379, 382; *King Bridge Co.* v. *Otoe County*, 120 *U. S.*, 225, 226; *Cameron* v. *Hodges*, 127 *U. S.*, 322, 325).

Further, it is the settled doctrine of this Court that the inquiry into the jurisdiction of the Circuit Court is limited to the facts appearing on the record in the first instance (*Colorado Mining Co.* v. *Turck*, 150 *U. S.*, 143; *State of Tenn. et al.* v. *Union Planter's Bank et al.*, 152 *U. S.*, 453).

The only semblance of a Federal question alleged is in paragraph I. of the complaint as follows:

"That under the Constitution and laws of the said State of South Carolina and the Constitution and laws of the United States, the said plaintiff is and was at the time aforesaid twenty-one years of age, and is and was in every other respect a

duly qualified elector of said State, and is and was on the said 6th day of November, 1894, entitled to vote for a member of the House of Representatives of the United States from said State of South Carolina."

Does this allege a Federal question? Suppose plaintiff was a duly qualified elector, entitled to vote for a member of the House of Representatives of the United States, there is no allegation that any qualification is fixed by the Federal Constitution, or that any right guaranteed by the Constitution has been infringed. In fact, no such allegation could be made. His qualification as an elector depends on the State Constitution and statutes.

Congress has not vested in the Circuit Court jurisdiction to try this case, unless it arises under the Constitution and laws of the United States.

"The Constitution of the United States does not confer the right of suffrage upon any one."

Minor *v.* Hapersett, 21 Wall., 162.
United States *v.* Reese, 92 U. S., 214.
United States *v.* Cruikshank, 92 U. S., 542.
Neal *v.* Delaware, 103 U. S., 370.
Ex parte Yarborough, 110 U. S., 651.

The right of suffrage is a privilege which the elector enjoys under the Constitution and laws of his State.

In United States *v.* Cruikshank *et al.*, 92 U. S., 549, the Court said: "We have in our political system a government of the United States and a government of each of the several States. Each one of these governments is distinct from the other and each has citizens of its own who owe it allegiance, and whose rights within its jurisdiction it must protect. The same person may be at the same time a citizen of the United States and a citizen of the State, but his rights of citizenship under one of these governments will be different from those he has under the other." Citing Slaughter House cases, 16 Wall., 74.

In the Slaughter House cases Mr. Justice Miller said:

"If, then, there is a difference between the privileges and immunities belonging to a citizen of the United States as such, and those belonging to a citizen of a State, as such, the latter must rest for their security and protection where they have heretofore rested, for they are not embraced by this paragraph of the amendment."

The expressions used in the Slaughter House cases become more significant in view of the unanimous decision of the Court in Minor *v.* Hapersett, 21 Wall., 163, with Mr. Justice Miller sitting as a member of the Court. In that case it was held that "Neither the Constitution nor the 14th Amendment made all citizens voters." Mr. Chief Justice Waite, delivering the opinion of the Court, said: "The United States has no voters in the States of its own creation. The elective officers of the United States are all elected directly or indirectly by State voters."

It is well settled by a long line of decisions that the constitutional guaranty is not of the right to vote, but of exemption from discrimination on account of race, color or previous condition. This guaranty against discrimination is the only new constitutional right vested in citizens of the United States by the Fourteenth and Fifteenth Amendments.

United States *v.* Reese *et al.*, *supra.*

In United States *v.* Petersburg Judges of Election, I. Hughes, C. C. R. 94, Judge Bond, Circuit Judge, held:

"The Fourteenth and Fifteenth Amendments do not affect the right of a State to define the rights of citizenship; nor does it draw in the jurisdiction of the Circuit Court of the United States the question of the invasion of the rights of persons or property as such."

Judge Hughes, District Judge, in the same case held:

"The Federal courts have no jurisdiction to protec- rights which accrue from the citizenship of a State, but only such as accrue from citizenship of the United States. The right to vote belongs to the fort mer class. It is not a natural or inherent right, but a privilege conferred or withheld by the several States in their own discretion. The only guarantee of the United States in this connection is under the Fifteenth Amendment, that no State shall deny or abridge the privilege on account of race, color or previous condition. The only case in which the Federal courts can entertain jurisdiction of any question upon this right is when violation of this guarantee is alleged."

In the conclusion of his opinion he says:

"If the indictment had charged that the denial of the right had been on account of race, color or previous condition; or if after charging the denial, it had been alleged that he was prevented from voting for a Member of Congress, or electors of President, I am inclined to think the offense would have been cognizable here. But a charge merely that a citizen of the United States was denied registration, without other allegations to make it appear some right was abridged, which belonged to the man as a citizen of the United States, is not sufficient to give cognizance of the offense to this Court."

In *United States* v. *Crosby et al.*, 1 *Hughes* 456, *Judge Bond held:*

"The right of a citizen to vote depends upon the laws of the State in which he resides, and is not granted to him by the Constitution of the United States, nor is such right guaranteed to him by that instrument. All that is guaranteed is that he shall not be deprived of the suffrage by reason of his race, color or previous condition of servitude."

"The true interest of the people of this country requires that both the National and State Governments should be allowed, without jealous interference, on either side, to exercise all the powers which respectively belong to them according to a fair and

practical construction of the Constitution. States rights and the rights of the United States should be equally respected. Both are essential to the preservation of our liberties and the perpetuity of our institutions. But in endeavoring to vindicate the one, we should not allow our zeal to nullify or impair the other."

Ex Parte Siebold, 100 U. S., 394.

The case of *Ex parte* Yarborough is cited by counsel for plaintiff in error at page 42 of his brief, but it does not sustain the principle for which he contends. Granting that the right to vote for a member of Congress depends primarily on the Constitution of the United States, we cannot accede to the ingenuous argument by which counsel for plaintiff in error seeks to engraft certain parts of the State Constitution on the Constitution of the United States, ignoring the statutes of the State enacted pursuant to the Constitution. Nor do we concede the proposition, "that the qualification of State electors are purely and exclusively constitutional." Referring again to the case of *Ex parte* Yarborough, *supra,* we call attention to the connection in which the quotation in plaintiff's brief is used. The Court says:

"This proposition answers also another objection to the constitutionality of the laws under consideration, namely: That the right to vote for a member of Congress is not dependent upon the Constitution or laws of the United States, but is governed by the laws of each State respectively."

"If this were conceded, the importance to the general government of having the actual election, the voting for those members, free from force and fraud is not diminished by the circumstance that the qualification of the voter is determined by the laws of the State where he votes. It equally affects the government; it is as indispensable to the proper discharge of the great function of legislating for that government, that those who are to control this legislation shall not owe their election to bribery or violence, whether the class of persons who shall vote is determined by the law of the State, or by

the law of the United States, or by their united result."

"But it is not correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States. The office, if it be properly called an office, is created by that Constitution and by that alone. It also declares how it shall be filled, namely, by election."

Its language is: "The House of Representatives shall be composed of Members chosen every second year by the people of the several states, and the electors in each state shall have the same qualifications requisite for electors of the most numerous branch of the State Legislature" (Article I, Section II). The States in prescribing the qualifications of voters for the most numerous branch of their own Legislature do not do this with reference to the election for Members of Congress. Nor can they prescribe the qualifications for voters for those *eo nomine*. They define who are to vote for the popular branch of their own Legislature, and the Constitution of the United States says the same persons shall vote for Members of Congress in that State. It adopts the qualifications thus furnished as the qualification of its own electors for Members of Congress."

"It is not true, therefore, that electors for Members of Congress owe their right to vote to the State law in any sense which makes the exercise of the right to depend exclusively on the law of the State."

If we would read into Section 2, Article I., of the Federal Constitution, the qualifications for electors for Members of Congress in the State of South Carolina, we must insert all the provisions of the South Carolina Constitution and statutes determining the qualifications for electors of the most numerous branch of the State Legislature.

The State Constitution of 1868, in fixing the right of suffrage, provided in Article 8, Section 3: "It shall be the duty of the General Assembly to provide from time to time for the registration of all electors." Pursuant to this power, the General Assembly enacted a system of registration laws, carefully

guarding against any encroachment upon the Federal Constitution.

Section 131 of the Revised Statutes of South Carolina is as follows: "Every male citizen of the United States of the age of twenty-one years and upward, not laboring under the disabilities named in the Constitution, without distinction of race, color or former condition, who shall have been a resident of the State for one year, and in the county in which he offers to vote for sixty days next preceding any general election, shall be entitled to vote: Provided, That no person while kept in any alms house or asylum, or or of unsound mind, or confined in any public prison, or who shall have been convicted of treason, burglary, larceny, perjury, forgery or any other infamous crime or dueling, shall be allowed to vote."

Section 132 *is as follows:*

"All electors of the State shall be registered; and no person shall be allowed to vote at any election hereafter to be held, unless he shall have been heretofore registered in conformity with the requirements of Chapter VII. of the General Statutes of 1882, and acts amendatory thereof, or shall be registered as herein required."

These then furnish the qualifications requisite for electors of the most numerous branch of the State Legislature, and under Article I., Section 2 of the Federal Constitution are the measure of electors for a member of Congress.

The complaint in this case does not and cannot allege that any qualification is fixed by the Federal Constitution. Nor is there any allegation that any right guaranteed by the Constitution and laws of the United States has been infringed.

The Circuit Court is therefore without jurisdiction.

SECOND PROPOSITION.

The complaint does not state facts sufficient to constitute a cause of action.

Section 163 of the Code of South Carolina is as follows:

"A complaint shall contain a plain and concise statement of facts constituting a cause of action, without unnecessary repetition."

In construing this ~~action~~ section, the Supreme Court of South Carolina held in case of Chalmers *v.* Glenn, 18 S. C., 481: "Thus generally it may be said that a cause of action exists when the legal rights of one party are invaded by another. It follows, therefore, that he (the plaintiff) must allege in his complaint all the facts showing his right, and also showing its invasion by the defendant; and the facts thus alleged must in law, upon their face on the one side, entitle him to the right which he claims, and on the other amount to an invasion by the defendant."

If the Circuit Court has jurisdiction, then the facts necessary to a recovery and to be stated in the complaint are:

I.—That the plaintiff was duly qualified and entitled under the Constitution and laws of the United States to vote at the Congressional election in South Carolina, and that he furnished defendants with sufficient evidence of such qualification.

II.—That the defendants willfully and maliciously denied him this right.

III.—That the acts were committed within the jurisdiction of the Court.

FIRST.—It is not stated that the action arises under the Constitution or laws of the United States, or that any right, title, privilege or immunity on which the remedy depended has been denied him in contravention of the Federal Constitution or laws.

SECOND.—The complaint contains no allegation of malice or corruption on the part of the defendants.

In most of the States where managers of election have been held liable in damages to an elector whose vote is refused, it has been on proof of malice or corruption.

The leading case is that of Jenkins *v.* Waldron, II. Johnson (N. Y.), 114. This case is based upon the doctrine laid down in the English case of Ashby *v.* White, 2 Ld. Rayn, 938. Justice Spencer, in delivering the opinion in Jenkins *v.* Waldron, says: "The principal case relied on by counsel is that of Ashby *v.* White. There the declaration alleged that the rejection of Ashby's vote was done fraudulently and maliciously, and although the jury found the defendant guilty, the judgment was arrested. This judgment was afterwards reversed in the House of Lords. The first resolution of the Lords states: 'That by the known laws of this Kingdom, any freeholder or other person having the right to give his vote at the election of members to serve in Parliament, and being wilfully denied or hindered to do so by the officer who ought to receive the same, may maintain an action in the Queen's Court against such officer, to assert his right and to recover damages for the injury.' The case of Harrison *v.* Tappenden, I. East., 555, clearly shows that this action is not maintainable without stating and proving malice, express or implied, on the part of the officers. In the case in the text, Lawrence, *J.*, said there is no instance of an action of this sort maintained for an act arising from merely error of judgment."

Brightly's Leading Cases on Election, p. 192.

McCrary on Elections, Section 494, says: "The general rule is that an officer of election or of registration, who shall wilfully and corruptly refuse to any citizen who is duly qualified the right to vote or register, is liable in damages to the person injured. In several of the States it is regarded as sufficient to show that the plaintiff has been unlawfully deprived of his right without proof of a malicious or corrupt purpose on the part of the officer; but the general doctrine is as above stated. In those States where no proof of malice is necessary the plaintiff must allege and prove that he furnished defendants with sufficient evidence of his having the legal qualifications of a voter before defendants refuse to receive his vote.

This decision comes almost up to the rule as it exists in most of the other States, because if the voter furnished sufficient evidence of his right, that fact would go far to prove willfulness on the part of the officer who, in the face of such evidence, refuses him the privilege of voting."

The allegation in the complaint is:

IV.—"That the said defendants unlawfully, willfully and injuriously refused to permit the said plaintiff to vote at said precinct, and at said Federal election, which was there held according to law on said 6th day of November, 1894, for one of the candidates for Member of said House of Representatives of the United States for the State aforesaid, and wrongfully and willfully, and without any lawful cause or excuse, rejected the plaintiff's said vote, to his damage two thousand and five hundred dollars."

This allegation does not charge that the act done by the defendants was done "*willfully* and *wantonly*," as stated in the brief for plaintiff in error (p. 3).

"In those States where no proof of malice is necessary, the plaintiff must allege and prove that he furnished defendants with sufficient evidence of his having the legal qualifications of a voter before defendants refused to receive his vote" (McCrary on Elections). This complaint has no such allegation.

The averment is: "and plaintiff further avers that he then and there had ready the proof of his qualifications as such Federal elector, as aforesaid." "*He then and there had ready the proof.*" Did he offer it to the defendants? The complaint does not so state. There is no allegation that the defendants even knew that he was an elector. His statement might be true, even had he refused to furnish them the proof of his qualification, while he held in his pocket a registration certificate. His complaint needs this material allegation.

We, therefore, conclude that the complaint should either allege malice and corruption or show that the plaintiff offered defendants proof of his qualification as an elector before his vote was refused.

THIRD.—The complaint does not state that the plaintiff was duly registered as an elector under the laws of South Carolina. It was upon this ground particularly that the Circuit Court sustained the demurrer.

Counsel for plaintiff in error, on page 5 of his brief, says: "If the registration law of South Carolina be valid and subsisting, then the ground upon which the Circuit Judge sustained the demurrer is sound." Pages 5 to 32, inclusive, of his brief are devoted to an attack upon the Registration Act of 1882, which was in force at the time the plaintiff in error alleges that he was denied the right to vote. Without conceding the question of jurisdiction or admitting that to sustain the dismissal of the complaint, it is necessary to establish the validity of the whole registration system, we submit that the registration law of South Carolina is not in contravention of the Constitution of the State and of the United States.

"In creating a legislative department and conferring upon it the legislative power, the people must be understood to have conferred the full and complete power, as it rests in and may be exercised by

the sovereign power of any country, subject only to such restrictions as they may have seen fit to impose, and to the limitations which are contained in the Constitution of the United States. The legislative department is not made a special agency for the exercise of specifically defined legislative power, but is intrusted with general authority to make laws at discretion."

Cooley Const. Limit. (*Ed. 6th*), 104.

Again (on p. 105), he quotes approvingly the language of Chief Justice Draper, that "Plenary power in the legislature for purposes of civil government is the rule. A prohibition to exercise a particular power is an exception. In inquiring, therefore, whether a given statute is constitutional, it is for those who question its validity to show that it is forbidden."

Again, on page 192, discussing "the circumstance under which a legislative enactment may be declared unconstitutional," Judge Cooley says:

"Nor can a Court declare a statute unconstitutional and void solely on the ground of unjust and oppressive provisions, or because it is supposed to violate the natural, social or political rights of the citizen, unless it can be shown that such injustice is prohibited, or such rights guaranteed or protected by the Constitution" (*Const. Limit.*, *6th Ed.*, 197). Mr. Sedgwick, in his work on Statutory and Constitutional Law, says:

"Constitutional provisions may be ambiguous; the doctrine of interpretation is vague; but these branches of judicial authority are subject to some test, and can be circumscribed within some limits. But who will undertake to decide what are the principles of eternal justice, and who can pretend to fix any limits to the judicial power, if they have the right to annul the operations of the Legislature on the ground that they are repugnant to natural rights? There may be, there always will be, questions, not only as to the expediency, but as to the justice of laws. But questions of public policy and State necessity are not meant to be assigned to the domains of the Court. The right of construction, the right of applying constitutional restrictions, are vast powers, which it will always require great sagac-

ity and intelligence to exercise. Let the judiciary rest contented with its acknowledged prerogatives, and not attempt to arrogate an authority so vague and so dangerous as the power to define and declare the doctrines of natural law and abstract right in the construction of statutes" (*Sedg. on Stat. and Con. Law*, 182).

This doctrine is adhered to by Chief Justice Fuller in N. Y. & N. E. R. R. Co. *v.* Bristol, 151 U. S., 570.

The right to vote is not an inherent or absolute right found among those generally reserved in bills of rights, but its possession is dependent upon constitutional or statutory grant. Subject to the limitations contained in the Federal Constitution, the elective franchise is under the control of the sovereign power of the State, expressed in constitutions or statutes properly enacted. When a constitution has conferred the right and prescribed the qualifications of electors it, of course, is paramount until amended and the Legislature cannot change or add to them in any way. But when the Constitution does not fix the right of suffrage or prescribe the qualifications of voters it is competent for the Legislature to do so. These principles are well established.

It is equally well settled that the power to provide for the orderly exercise of the right of suffrage, which belongs to the State Legislature, includes the power to enact registry laws, and to prohibit from voting persons not registered. Such laws do not add to the constitutional qualifications of voters. *State* v. *Dillon*, 14 *Southern R.*, 394.

In the case of Keenen v. *Wells*, 144 *Mass.*, 497, *the Court held:*

" However unjust, unwise or even tyrannical such regulations may be, or seem to be, the right of each State to define the qualifications of its electors is complete and perfect, except so far as it is controlled by the 15th Amendment to the Constitution of the United States."

Judge Cooley in his work on Constitutional Limitations, 752, says:

"The whole subject of the regulation of elections, including the prescribing of qualifications for suffrage is left by the National Constitution to the several states. Participation in the elective franchise is a privilege rather than a right, and it is granted or denied on grounds of public policy; the prevailing opinion being that it should be as general as possible consistent with public safety."

Let us again quote from the Constitution of South Carolina, Section 2, Article 8, referring to the qualifications of electors. It is as follows:

"Every male citizen of the United States of the age of twenty-one years and upwards, not laboring under the disabilities named in this Constitution, without distinction of race, color or former condition, who shall be a resident of this State at the time of the adoption of this Constitution, or who shall thereafter reside in this State one year, and in the County in which he offers to vote sixty days next preceding any election, shall be entitled to vote for all officers that are now or hereafter may be elected by the people and upon all questions submitted to the electors at any elections: Provided, That no person shall be allowed to vote or hold office who is now or may hereafter be disqualified therefor by the Constitution of the United States until such disqualification shall be removed by the Congress of the United States: Provided, further, That no person while kept in any almshouse or asylum, or of unsound mind, or confined in any public prison, shall be allowed to vote or hold office."

Section 3, Article 8, is as follows:

"It shall be the duty of the General Assembly to provide from time to time for the registration of all electors."

In pursuance of these two constitutional provisions, the Legislature has enacted the following law found in the Revised Statutes of 1893, Sections 131 and 132, which are as follows:

"Every male citizen of the United States of the age of twenty-one years and upwards, not laboring under the disabilities named in the Constitution, without distinction of race, color or former condition, who shall have been a resident of the State for one year, and in the county in which he offers to vote sixty days next preceding any general election, shall be entitled to vote: Provided, That no person while kept in any almshouse or asylum, or of unsound mind, or confined in any public prison, or who shall have been convicted of treason, murder, burglary, larceny, perjury, forgery, or any other infamous crime, or duelling, shall be allowed to vote."

Section 132. "All electors of the State shall be registered and no person shall be allowed to vote at any election hereafter to be held unless he shall have been heretofore registered in conformity with the requirements of Chapter VII. of the General Statutes of 1882, and Acts amendatory thereof, or shall be registered as herein required."

It will be observed that Section 132 provides that the elector shall register according to the registration laws enacted, to entitle him to vote.

Section 3, Article 8, of the Constitution is mandatory. The Legislature is left no discretion in the matter of the registration of electors. Besides, it provides that from time to time provision shall be made for this registration.

This section leaves the whole subject of the regulation of election by the enactment of registration laws to the General Assembly, and it is alone the judge of the requirements of such registration laws and from its decision there can be no appeal.

Section 90 of the General Statutes of 1882, prescribing that no one shall vote without registering under the laws enacted was not only in consonance with the provisions of the Constitution, but carried out the positive mandate in the manner intended.

It will be observed that in States, in which it has been held that registration laws which necessarily restrain, impair, or impede the right of suffrage were invalid, there was no authority, either discretionary or mandatory, in their Constitutions to

enact registration laws, and those passed were enacted under the power included in the general power of the Legislature to provide for the orderly exercise of the right of suffrage, such as fixing the time, place and manner of elections, &c.

The real question in *Capen* v. *Foster*, cited in brief for plaintiff in error, was whether, under the inherent general power of the Legislature to provide for an orderly election, the power to enact registration laws *per se*, was not in violation of the Constitution, when no authority was conferred by that instrument to enact such laws.

In *Munroe* v. *Collins*, 17 Ohio, 665, also cited by counsel for plaintiff in error, the doctrine is announced:

That when this general power is exercised by the Legislature of enacting registration laws, they should facilitate rather than impede the right of suffrage; and sustains the doctrine of the Massachusetts case, that registration laws could be enacted in the exercise of this general power.

In Paige v. *Allen*, 58 *Penn.*, 338, the same doctrine was announced as in the Ohio case, and in *Pattison* v. *Barlow*, 60 *Pa.*, 75, the same doctrine was announced, and a registration law was held constitutional as having been enacted under this general power.

In Edmunds v. *Bamberry*, 38 *Iowa*, 267; *and in Woods* v. *Baker*, 38 *Wis.*, 71, *the same doctrine* was held.

In the case of Kenneen v. *Wells*, 144 *Mass.*, 894, the same doctrine was held reaffirming *Capen* v. *Foster*.

A careful examination of all these cases will show that the Constitution of these States did not confer special, express power upon the Legislatures to pass registration laws, but they were enacted under the

general power to provide orderly elections by fixing place, time and manner of holding the same.

But the registration law of South Carolina stands on an entirely different basis. It was not only enacted in the performance of a duty commanded by the Constitution, but in the exercise of a power especially conferred—the manner of the exercise of the power being left entirely to the Legislature. It is left as the sole judge of the provisions of such registration laws, and when such a law is enacted its reasonableness cannot be questioned. This case then can be differentiated from all the cases upon which the courts have passed upon registration laws. They were cases in which the laws were passed under the general power to provide for orderly elections. This is a case in which not only this power was exercised but the superadded power conferred by the Constitution of South Carolina to enact such registration laws as the Legislature sees fit.

The Constitution of Florida contains substantially the same provisions in reference to registration system as are found in the Constitution of South Carolina. In the recent case of *State* v. *Dillon*, 14 Southern R., 394, it was held that the Legislature of Florida was the sole judge of the reasonableness of the registration law passed in pursuance of the authority conferred by the Constitution.

In North Carolina the Constitution confers this special power to enact such laws.

In the case of State v. *Scarboro*, 14 *S. E. R.*, 736 (*N. C.*), a registration law was held valid and constitutional which required the applicant to give his age, occupation, place of birth, place of residence, as well as the township from which he removed, and his full name, &c., the Judge delivering the opinion says:

"In the case at bar we have a reasonable statutory requirement that the elector shall place upon the registration books certain facts connected with his own history, in order that opportunity may be given to look into the grounds for challenge, and

thereby prevent illegal voting, or, that the Court may detect and punish crime if it becomes a fact accomplished."

Upon these principles it is submitted that the registration acts of 1882 were valid and binding on the plaintiff in error, and every other citizen of South Carolina attempting to cast his ballot in the election held on the 6th day of November, 1894.

After considering the sections of the General Statutes of 1882 relating to registration, counsel for plaintiff in error at page 33 of his brief, says:

"*Now, what of the Act of* 1894? *Will it stand the test of constitutional inquiry?*"

Neither these questions nor the pages of argument answering them, which practically cover the remainder of his brief, are in any way relevant to this case.

The alleged acts of the defendants upon which this suit is based were committed at an election held on the 6th day of November, 1894 (Transcript, fol. 2).

The Act of 1894 referred to by counsel is an Act of the General Assembly entitled, "An Act to provide for calling a Constitutional Convention, to provide the number and qualification of members of the convention, their compensation, &c., and to provide for the election of the same, and to define and prescribe the qualification of electors and the manner of election and of declaring the result," approved 24th day of December, 1894, *more than six weeks after the date of the election in question*, and the system of registration therein provided related exclusively to the registration of electors at the election for members of a Constitutional Convention.

Is further statement necessary? Counsel seems to have anticipated that we would urge the Act of

1894 upon this Court. Nothing could be more absurd, and to appropriate his language (brief, p. 35), "Life is too short and time too fleeting to reason with such unreason."

On page 45 it is stated, "that the tortious act complained of was committed while the Acts of 1882 and 1894 were upon the statute books." This is but restating the error already made. The Act of 1894 was subsequently passed.

The supposition that we would have aught to say about the State Constitution of 1895 or the Act of March 5, 1896, is no less erroneous than the statement just referred to.

The Act of December 24, 1894, the State Constitution of 1895, and the Act of March 5, 1896, are all wholly irrelevant to the issue in this case. Referring to all of them, if we may again appropriate the language of opposing counsel, we would use his concluding words and say: "The issues as to the new law that may arise upon a proper case made are not for us to suggest or argue, nor for this Court, in this cause, to consider and adjudicate."

WM. A. BARBER,
For Defendants in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1899.

DANIEL WILEY, Plaintiff in Error,

vs.

D. L. SINKLER, T. D. LANIGAN and BENJAMIN ELFE.

No. 4.

The Registration Law of South Carolina, Embodied in the Revised Statutes of 1893.

CHAPTER VIII.

SECTION 131. Every male citizen of the United States of the age of twenty-one years and upwards, not laboring under the disabilities named in the Constitution, without distinction of race, color or former condition, who shall have been a resident of the State for one year, and in the county in which he offers to vote for sixty days next preceding any general election, shall be entitled to vote: Provided, That no person while kept in an almshouse or asylum, or of unsound mind, or confined in any public prison, or who shall have been convicted of treason, murder, burglary, larceny, perjury, forgery or any other infamous crime, or dueling, shall be allowed to vote.

SECTION 132. All electors of the State shall be registered; and no person shall be allowed to vote at any election hereafter to be held unless he shall have been heretofore registered in conformity with the requirements of Chapter VII of the General Stat-

utes of 1882, and Acts amendatory thereof, or shall be registered as herein required.

SECTION 133. On or before the first day of March, in every second year, reckoning from 1882, the Governor shall appoint, by and with the advice of the Senate, if in session, and if not in session, subject to its approval at its next session, and subject to removal by the Governor, by and with the advice and consent of the Senate, one competent and discreet person in each county, who shall be a qualified voter thereof, and who shall hold his office at the county seat, and shall be known as the Supervisor of Registration of such county, and whose duty it shall be to supervise the registration of the electors of such county as herein specified. He shall keep a record of all his official acts and proceedings. The term of his office shall be for two years from the date of his appointment; he shall continue in his office until his successor shall be appointed and shall qualify; and his compensation shall be fixed by the General Assembly from time to time as may be deemed proper. His accounts for advertising (and in the County of Charleston, and rents for registration precincts also) and for stationery shall be audited and paid by the County Commissioners of his county.

SECTION 134. The Governor is authorized to appoint a deputy supervisor in case of the inability of the supervisor to act, who, when so appointed, shall have all the powers and be charged with the duties of the supervisor, and shall receive five dollars per diem when actually employed.

The Governor shall also appoint two assistant supervisors of registration who shall serve without compensation, and shall sit with the supervisor of registration in the determination of all cases of contested registration in which the supervisor shall refuse to register the applicant; the three supervisors shall sit for as many days, beginning on the second Tuesday in July, as may be necessary to hear and determine all such contested cases.

SECTION 135. The Secretary of State shall cause to be prepared a sufficient number of registration books and blanks, so

that there shall be two of said books for each precinct in each county, which books shall be ruled in columns, with proper headings, so as to indicate the name, age, occupation and place of residence of each elector, with a separate column to the right side of the page for such entries as may be necessary. And the secretary is authorized and required to provide additional registration books to supply the place of such as have become defaced and injured by use at the elections heretofore had, and he shall furnish the same upon application of any supervisor certifying to the necessity thereof. And in such case the supervisor so procuring such additional registration books shall copy from the original book the names and record thereof into the new book; and when the same shall be so copied it shall be the duty of the County Auditor and clerk of the Court of Common Pleas of the county, together with the supervisor, carefully to compare the names and record in the new book with those in the book so injured or defaced; and if the same is found correct to certify to its correctness; and such new book shall not be used at any election unless so certified.

SECTION 136. For the purpose of registration, each township, as now laid out and defined, and in those counties where there are no such townships, the parish, as formerly known and defined, is declared a registration precinct. In the City of Columbia each ward shall be a registration precinct, and in the City of Charleston the registration precincts shall be the same as the voting precincts now established in the several wards of said city, as designated and defined in section 158.

SECTION 137. After every general election the registration books shall be opened for registration of such persons as shall thereafter become entitled to register, on the first Monday in each month, until the first day of July preceding a general election, when the same shall be closed until such general election shall have taken place.

SECTION 138. It shall be the duty of the supervisors of registration to deposit said books in the office of the Clerk of Court of

Common Pleas in their respective counties, except in the counties of Charleston and Greenville, where they shall be deposited in the office of the Register of Mesne Conveyance; and it shall be the duty of the clerk of said court and the Register of Mesne Conveyance to safely keep the same together with the other books of record in their respective offices; and it shall be unlawful for any person or persons to remove the same from the said offices, except the supervisors, who are hereby authorized to take the same from said offices when it shall be necessary in the discharge of the duties imposed upon them by this chapter.

SECTION 139. The supervisor shall determine as to the legal qualifications of all applicants for registration by summary process, requiring oath, evidence, or both, if he deem proper, subject to revision by the assistant supervisors and himself in all cases where he has refused to register an applicant. From their decision any applicant who is rejected shall have the right to a review thereof by the Circuit Court, provided he give notice in writing to the supervisor of his application for such review, and the grounds thereof, within five days from the date of his rejection, and commence his proceedings within ten days from the service of said notice.

SECTION 140. Any person coming of age and otherwise qualified as an elector, may appear before the supervisor on any day on which the books are opened, as aforesaid, and make oath (which the supervisor is hereby authorized to administer) as to his name, age, occupation and place of residence; and if the supervisor find him qualified he shall enter his name upon the registration book of the precinct in which he resides. Such persons shall have the right of appeal, as provided in the last section, if the supervisor shall not find him qualified.

SECTION 141. In case a person shall not be of age to qualify him as an elector on the day of the closing of the books of registration before any general election, but shall be of such age as will qualify him as such elector before the said general election, and shall appear before the supervisor of registration and take

oath thereto, the supervisor, if he shall find him qualified, shall enter his name upon the registration book as aforesaid.

SECTION 142. Each elector registered as aforesaid shall thereupon be furnished by the supervisor with a certificate which shall contain a statement of his age, occupation and place of residence as entered in the said registration book, and which certificate shall be signed by the said supervisor, and no person shall be allowed to vote at any other precinct than the one for which he is registered, nor unless he produces and exhibits to the managers of election such certificate: Provided, In case there shall be no election precinct within any township or parish, the supervisor shall designate in the certificate at which of the neighboring precincts the elector shall vote; and in case there be more than one precinct in any township or parish the supervisor shall likewise designate in the certificate at which of the said precincts the elector shall vote. The certificate of registration shall be of the following form:

"Registration Certificate Number——, ——County, ———— Township or Parish, Election Precinct———————— The bearer, ————————————, is a qualified voter in the above precinct, and resides at————————in———————— Township, or ————————————Parish, and is———years of age and entitled to vote at said precinct. Registered on the ———day of————————A. D., 18—.

————————————————

Supervisor of Registration."

SECTION 143. Whenever a new polling precinct is established by law, it shall be the duty of the supervisor to transfer from the books of registration the names of such qualified voters registered at other precincts as should, under this section, register and vote at the new precinct so established, and who may request such transfer, and to make such changes as may be necessary in the certificates of registration issued to such voters, who shall

thereafter vote only at the precincts to which they have been thus transferred.

SECTION 144. When one polling place has been changed to another in any township, or where the name of the polling place has been changed since the last general election, the registration of voters for the former polling place shall be valid and effectual for the new polling place or precinct; or where one or more additional polling places or precincts have been established in the same township, or where a new precinct has been established in a township which formerly had none, it shall be the duty of the supervisor to change the certificates of registration of voters entitled by proximity of residence to vote at such new precinct, requiring in every case a surrender and cancellation of the former certificate and such evidence as he may deem proper as to the right of the elector to such change.

SECTION 145. Any registered elector who may reside nearer a polling place in a precinct or township than the precinct or township in which he registered, and who desires to vote at such nearer polling place, shall, upon the surrender of his certificate of registration to the supervisor, on or before the first Monday of July preceding the next general election, be entitled to a new certificate permitting him to vote at such nearer polling place; the old certificate to be destroyed by the supervisor and such changes made by him in the registration books as will conform to the general provisions of this chapter. The supervisor of registration may require of the applicant for such change an affidavit or such other evidence as he may deem necessary to a determination of the residence of the applicant.

SECTION 146. In case of the removal of an elector from one residence to another in the same precinct, he shall notify the supervisor and surrender to him his certificate of registration, and the supervisor shall enter the fact upon the registration book and give such elector a new registration certificate in accordance with such change of residence.

SECTION 147. In case of the removal of an elector from one precinct to another in the same county, such elector shall notify the supervisor and surrender his certificate of registration to the said supervisor, who shall enter the fact upon the proper registration book, and shall give such elector a new certificate for the precinct into which he has removed.

SECTION 148. In case of the removal of an elector from one county to another, he shall notify the supervisor of the county wherein he is registered, and shall surrender his certificate of registration; and the said supervisor shall thereupon enter the fact of such removal upon the registration book as aforesaid, and shall give such elector a certificate of transfer to the county to which such elector has removed, upon the presentation of which the supervisor for such county shall cause such elector to be registered in the precinct of such county to which he shall have removed, and shall furnish such elector with a certificate as hereinbefore provided.

SECTION 149. No elector removing from one residence, precinct, parish, ward or county to another shall be allowed to register or vote without a transfer of registration as above provided.

SECTION 150. Every elector shall have the right to a renewal of his certificate without fee or charge, when the same becomes defaced by time or accident, upon his surrendering such certificate so defaced to the supervisor of registration. In case of the loss of any certificate, the elector losing the same shall be entitled to a renewal thereof by the supervisor, upon application and proof of such loss, in the following manner, to wit: He shall at least thirty days before the next general election, make application under oath, setting forth the fact of such loss, and the circumstances attending it, as near as may be, and stating that he has not sold, bartered or parted with the same for any pecuniary, valuable or other consideration, and has not wilfully destroyed the same, which application the supervisor shall examine and consider, requiring other evidence under oath if in his judgment necessary to a determination as to the loss thereof;

and upon such examination and consideration, if the supervisor shall be satisfied that the certificate has been actually lost, he shall issue to the applicant a renewal thereof, marking or stamping the same "renewal." The decision of the supervisor shall be subject to revision by the assistant supervisors together with the supervisor to whom the application is made, in all cases in which he has refused to renew the said certificate. From the decision of the supervisor and assistant supervisors an applicant who has been refused a renewal of his certificate shall have the right of a review thereof by the Circuit Court of the county in in which he was registered: Provided, He give notice thereof to the supervisor to whom he made application for such renewal within five days of the refusal thereof by the supervisor and assistant supervisors and commence proceedings within ten days from the giving of said notice.

SECTION 151. The supervisor of registration shall, immediately preceding each election, revise the registration of electors, and mark off the names of such electors as have died and such as have removed from one residence, precinct, parish, ward or county to another without notifying him and obtaining a certificate of transfer as hereinbefore provided.

SECTION 152. The clerks of the Courts of General Sessions and Common Pleas in the several counties of the State shall, on or before the fifteenth day of October, A. D. 1892, and biennially thereafter on or before the same day, make out and report to the supervisors of registration for their respective counties a complete list of all male persons convicted during the two preceding years, up to the first Monday of October aforesaid, of the following offenses, to wit: Murder, burglary, larceny, perjury or any other infamous crime, or duelling; such report must be accompanied by the certificate of the clerk, under the seal of his office, that the report is correct as appears from the records of his office.

Any clerk of the Court who shall fail or neglect to comply with the provisions of this section shall forfeit and pay to the

county in which he holds his office the sum of fifty dollars for each and every failure so to report.

SECTION 153. Every trial justice in the State shall, on or before the fifteenth of October, A. D. 1892, and biennially thereafter on or before the same day, make out under his hand and seal, and submit to the supervisor of registration for the county in which he holds his office, a certified list of all male persons convicted of petit larceny before him or any of his predecessors, whose trial docket is in his possession, during the two preceding years, or the period following his next preceding report. Any trial justice going out of office shall furnish such list immediately upon his retirement and up to that time, and any trial justice hereafter appointed shall furnish such list from the time of his entry upon the duties of his office. Any trial justice who shall fail or neglect to furnish such report as herein required shall forfeit and pay to the county in which he holds his office the sum of ten dollars for each and every such failure to report.

SECTION 154. The reports provided for in the two preceding sections shall be received by the supervisor as prima facie proofs of the facts stated therein, and he shall immediately erase the names of all such persons from the registration books in his county, and they shall not be allowed thereafter to register or vote in any elections in this State: Provided, That if any such person whose name is so furnished shall present to such supervisor, within sixty days after the next following election, a pardon from the Governor, or, within such time, prove to the satisfaction of such supervisor that he was not convicted of the crime or misdemeanor stated in such certificate, his name shall be restored to the list of registered voters as completely and effectually as if the same had not been stricken therefrom.

SECTION 155. At each and every election the supervisor of registration shall furnish the managers of election with one of the registration books for each precinct, for the care and custody of which the managers receiving the same shall be responsible, and which they shall return to the supervisor of registration

within three days after the close of the election ; and no elector shall be allowed to vote whose name is not registered as provided in this chapter.

SECTION 156. The supervisor of registration is authorized and directed to exchange the registration of such electors as may apply to him for that purpose, from the other precincts to the precincts now established by law, whenever it shall appear to him that the elector so applying resides within a reasonable distance of the same.

City of Charleston—Special Provisions.

SECTION 157. No certificate of registration issued to any elector in the City of Charleston prior to December 24, 1890, shall be good and valid to entitle such elector to vote in any State, federal or municipal election.

SECTION 158. The new set of registration books prepared and completed in pursuance of the provisions of the Act of December 24, 1890, No. 469, by the commissioners appointed under the said act for the purpose, and by them turned over and delivered to the supervisor of registration for the County of Charleston, constitute the original books of registration for said county, so far as the same relate to the voting precincts of the said City of Charleston.

SECTION 159. There shall be in said city but one registration and one set of certificates for all election purposes ; and the revised registration aforesaid and the certificates issued by said commissioners in accordance with the provisions of said act, and those which have since been and hereafter shall be issued in pursuance of the provisions of this chapter, shall be good and sufficient for any election in said city, whether State, federal or municipal.

SECTION 160. At each and every election of mayor and aldermen of the City of Charleston, whether the same be a regular election or one to supply a vacancy or vacancies in any of the said offices, the supervisor of registration for Charleston County

shall furnish the manager of such election with one of the registration books for each such precinct, or with a copy of such book, duly certified by the said supervisor to be a true copy; for the care and custody of which the managers receiving the same shall be responsible, and which they shall return to the supervisor of registration within three days after the close of the election: Provided, however, That in case the supervisor of registration for Charleston County shall fail, neglect or be unable to furnish the managers of such election with the registration books, or with copies of such books, duly certified by the said supervisor as required hereinbefore, in time for any such election, then and in such case, the production by any voter, qualified to vote at such election and offering to vote thereat, of his registration certificate, issued in accordance with law, shall be sufficient evidence of his having been duly registered: Provided, Said certificate of registration shall have been issued on or before the 31st day of May, 1891, by the commissioner appointed under the provisions of an act approved December 24, 1890, and entitled "An Act to amend Part I, Title II, Chapter X, Section 163, of the General Statutes of South Carolina, relating to the location and names of voting precincts, and acts amendatory thereof, so far as the same relate to voting precincts in the City of Charleston, to rearrange the said precincts for all elections, whether State, federal or municipal, and to provide for a revision of the registration of electors in accordance therewith," or by any supervisor of registration for Charleston County since the date last named.

(Copied January 5, 1900.)

Supreme Court of the United States.

No. 2.—October Term, 1900.

Daniel Wiley, Plaintiff in Error,
vs.
D. L. Sinkler, T. D. Lanigan and Benjamin Elfe.

In error to the Circuit Court of the United States for the District of South Carolina.

This was an action, brought March 11, 1895, in the Circuit Court of the United States for the District of South Carolina, by a resident of the city of Charleston in that State, against the board of managers of a general election at a ward and precinct in that city, to recover damages in the sum of $2500 for wrongfully and wilfully rejecting his vote for a member of the House of Representatives of the United States for the State of South Carolina on November 6, 1894. The allegations of the complaint were as follows:

"I. That the plaintiff is and was on the 6th day of November, 1894, a resident of the city and county of Charleston in the State of South Carolina; and that he had been a resident of said State for a period of more than twelve months next preceding said 6th day of November, 1894, and a resident of said city and county for more than sixty days next preceding said day; and that under the constitution and laws of the said State of South Carolina and the Constitution and laws of the United States the said plaintiff is and was at the time aforesaid twenty-one years of age, and is and was in every other respect a duly qualified elector of said State, and is and was on the said 6th day of November, 1894, entitled to vote for a member of the House of Representatives of the United States from said State of South Carolina.

"II. That the defendants were on the day and year aforesaid the board of managers of the Federal election at the first election precinct in the sixth ward of said city of Charleston in said county and State; that, as the plaintiff has been informed and believes, the said defendants were duly appointed and qualified as such managers; and that they were present at the polling place in the said election precinct on the said 6th day of November, 1894, and during all the time the polls were opened on said day were there, acting as such board of managers of the Federal election.

"III. That the proper election precinct at which the said plaintiff was entitled to vote is the said first precinct in the sixth ward of the city and county of Charleston in the State aforesaid; and that on the said 6th day of November, 1894, and while the polls were open for voting purposes, the said plaintiff presented himself at the polling place in said election precinct, and then and there offered to vote and cast his ballot for one of

the candidates for the office of member of the House of Representatives of the United States for the State of South Carolina in the Fifty-fourth Congress; and the plaintiff further avers that he then and there had ready the proof of his qualifications as such Federal elector as aforesaid.

"IV. That the said defendants unlawfully, wilfully and injuriously refused to permit the said plaintiff to vote at said precinct and at said Federal election which was there held according to law, on said 6th day of November, 1894, for one of the candidates for member of said House of Representatives of the United States for the State aforesaid; and wrongfully and wilfully, and without any lawful cause or excuse, rejected the plaintiff's said vote; to his damage two thousand and five hundred dollars.

"Wherefore the plaintiff demands judgment against the defendants for the said sum of two thousand and five hundred dollars, and for the costs of this action."

The defendants demurred to the complaint, upon the following grounds:

First. That the court had no jurisdiction of the action, because it did not affirmatively appear on the face of the complaint that a Federal question was involved; and because it appeared on the face of the complaint that a verdict for $2000 would be so excessive that the court would be required to set it aside.

Second. That the complaint did not state facts sufficient to constitute a cause of action, because by section 2008 of the Revised Statutes of the United States an action must be brought for a penalty, and not for damages; and because the complaint did not state facts sufficient to constitute a cause of action, either under that statute, or at common law.

The court, without considering the other grounds, sustained the demurrer, and dismissed the complaint, because it did not state facts sufficient to constitute a cause of action, in that it failed to state that the plaintiff was a duly registered voter of the State of South Carolina. The plaintiff sued out a writ of error from this court.

The material parts of the constitution and laws of South Carolina, referred to in argument, are stated in the margin.*

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*In the constitution of 1868, the first article, entitled "Declaration of Rights," contains the following provisions:

"SECT. 31. All elections shall be free and open, and every inhabitant of this Commonwealth, possessing the qualifications provided for in this constitution, shall have an equal right to elect officers and be elected to fill public office."

"SECT. 33. The right of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult or improper conduct."

The eighth article of the same constitution, entitled "Rights of Suffrage," contains the following provisions:

"SECT. 2. Every male citizen of the United States, of the age of twenty-one years and upwards, not laboring under the disabilities named in this constitution,

[October 15, 1900.]

Mr. Justice GRAY, after stating the case as above, delivered the opinion of the Court.

This case involves the construction and application of the Constitution of the United States, and is therefore rightly brought directly from the Circuit Court of the United States to this court, under the act of March 3, 1891, c. 517, § 5, cl. 4. 26 Stat. 828.

The right to vote for members of the Congress of the United States is not derived merely from the constitution and laws of the State in which they are chosen, but has its foundation in the Constitution of the United States.

This is clearly and amply set forth in *Ex parte Yarbrough*, 110 U. S. 651, in which this court, speaking by Mr. Justice Miller, upheld a conviction in a Circuit Court of the United States under sections 5508 and 5520 of the Revised Statutes for a conspiracy to intimidate a citizen of the

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without distinction of race, color or former condition, who shall be a resident of this State at the time of the adoption of this constitution, or who shall thereafter reside in this State one year, and in the county in which he offers to vote sixty days, next preceding any election, shall be entitled to vote for all officers that are now or hereafter may be elected by the people, and upon all questions submitted to the electors at any elections: Provided, that no person shall be allowed to vote or hold office who is now or hereafter may be disqualified therefor by the Constitution of the United States until such disqualification shall be removed by the Congress of the United States: Provided, further, that no person, while kept in any almshouse or asylum, or of unsound mind, or confined in any public prison, shall be allowed to vote or hold office.

"SECT. 3. It shall be the duty of the general assembly to provide from time to time for the registration of all electors."

"SECT. 7. Every person entitled to vote at any election shall be eligible to any office which now is, or hereafter shall be, elective by the people in the county where he shall have resided sixty days previous to such election, except as otherwise provided in this constitution or the Constitution and laws of the United States.

"SECT. 8. The general assembly shall never pass any law that will deprive any of the citizens of this State of the right of suffrage, except for treason, murder, robbery or duelling, whereof the person shall have been duly tried and convicted." This section was amended in 1882 by substituting, for the word "robbery," the words "burglary, larceny, perjury, forgery, or any other infamous crime."

The Revised Statutes of South Carolina of 1893 contain the following provisions:

"SEC. 162. The general elections for Federal, State and county officers in this State shall be held on the first Tuesday following the first Monday in November in every second year, reckoning from the year one thousand eight hundred and seventy."

"SEC. 131. Every male citizen of the United States, of the age of twenty-one years and upwards, not laboring under the disabilities named in the constitution,

United States in the exercise of his right to vote for a member of Congress; and answered the proposition "that the right to vote for a member of Congress is not dependent upon the Constitution or laws of the United States, but is governed by the law of each State respectively," as follows:

"But it is not correct to say that the right to vote for a member of Congress does not depend on the Constitution of the United States. The office, if it be properly called an office, is created by that Constitution and by that alone. It also declares how it shall be filled, namely, by election. Its language is 'The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the state legislature.' Art. 1, sec. 2. The States, in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for members of Congress. Nor can they prescribe the qualification for voters for those *eo nomine*. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State. It adopts the qualification thus furnished as the qualifica-

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without distinction of race, color or former condition, who shall have been a resident of the State for one year, and in the county in which he offers to vote for sixty days, next preceding any general election, shall be entitled to vote: Provided, that no person, while kept in any almshouse or asylum, or of unsound mind, or confined in any public prison, or who shall have been convicted of treason, murder, burglary, larceny, perjury, forgery, or any other infamous crime, or duelling, shall be allowed to vote.

"SEC. 132. All electors of the State shall be registered; and no person shall be allowed to vote at any election hereafter to be held, unless he shall have been heretofore registered in conformity with the requirements of chapter 7 of the General Statutes of 1882, and acts amendatory thereof, or shall be registered as herein required."

Sections 133–136 provide for the appointment of a supervisor and two assistant supervisors of registration in each county, and establish registration precincts.

"SEC. 137. After every general election, the registration books shall be opened, for registration of such persons as shall thereafter become entitled to register, on the first Monday in each month, until the first day of July preceding a general election, when the same shall be closed until such general election shall have taken place."

Section 138 requires the books of registration to be deposited and safely kept in the office of a certain clerk or registrar.

"SEC. 139. The supervisor shall determine as to the legal qualifications of all applicants for registration by summary process, requiring oath, evidence, or both, if he deem proper, subject to revision by the assistant supervisors and himself in all cases where he has refused to register an applicant. From their decision any applicant who is rejected shall have the right to a review thereof by the circuit court, provided he give notice in writing to the supervisor of his application for such

tion of its own electors for members of Congress. It is not true, therefore, that electors for members of Congress owe their right to vote to the state law in any sense which makes the exercise of the right to depend exclusively on the law of the State." 110 U. S. 663.

The court then, referring to the statement of Chief Justice Waite in *Minor* v. *Happersett*, 21 Wall. 162, 178, that "the Constitution of the United States does not confer the right of suffrage upon any one," explained that statement as follows: "But the court was combating the argument that this right was conferred on all citizens, and therefore upon women as well as men. In opposition to that idea, it was said the Constitution adopts, as the qualification of voters for members of Congress, that which prevails in the State where the voting is to be done; therefore, said the opinion, the right is not definitely conferred on any person or class of persons by the Constitution alone, because you have to look to the law of the State for the description of the class. But the court did not intend to say that, when the class or the person is thus ascertained, his right to vote for a member of Congress was not fundamentally based upon the Constitution, which created the office of member of Congress, and declared it should be elective,

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review, and the grounds thereof, within five days from the date of his rejection, and commence his proceedings within ten days from the service of said notice.

"SEC. 140. Any person coming of age, and otherwise qualified as an elector, may appear before the supervisor on any day on which the books are opened as aforesaid, and make oath (which the supervisor is hereby authorized to administer) as to his name, age, occupation and place of residence; and if the supervisor find him qualified, he shall enter his name upon the registration book of the precinct in which he resides. Such persons shall have the right of appeal, as provided in the last section, if the supervisor shall not find him qualified.

"SEC. 141. In case a person shall not be of age to qualify him as an elector on the day of the closing of the books of registration before any general election, but shall be of such age as will qualify him as such elector before the said general election, and shall appear before the supervisor of registration and take oath thereto, the supervisor, if he shall find him qualified, shall enter his name upon the registration book as aforesaid."

Section 142 provides that "each elector registered as aforesaid shall thereupon be furnished by the supervisor with a certificate, which shall contain a statement of his age, occupation and place of residence, as entered in the said registration book, and which certificate shall be signed by the said supervisor; and no person shall be allowed to vote at any other precinct than the one for which he is registered, nor unless he produces and exhibits to the managers of election such certificate;" and the form of such certificate is prescribed.

By sections 146–149 an elector who changes his place of residence must surrender his certificate of registration and take out a new certificate; and by section 150, if an elector loses his certificate, he may, upon application made at least thirty days before the next general election, and upon complying with certain stringent provisions as to proof of the loss, obtain a new certificate.

and pointed to the means of ascertaining who should be electors." 110 U. S. 664.

The Circuit Court of the United States has jurisdiction, concurrent with the courts of the State, of any action under the Constitution, laws or treaties of the United States, in which the matter in dispute exceeds the sum or value of $2000. Act of August 13, 1888, c. 866; 25 Stat. 433.

This action is brought against election officers to recover damages for their rejection of the plaintiff's vote for a member of the House of Representatives of the United States. The complaint, by alleging that the plaintiff was at the time, under the constitution and laws of the State of South Carolina and the Constitution and laws of the United States, a duly qualified elector of the State, shows that the action is brought under the Constitution and laws of the United States.

The damages are laid at the sum of $2500. What amount of damages the plaintiff shall recover in such an action is peculiarly appropriate for the determination of a jury, and no opinion of the court upon that subject can justify it in holding that the amount in controversy was insufficient to support the jurisdiction of the Circuit Court. *Barry* v. *Edmunds*, 116 U. S. 550; *Scott* v. *Donald*, 165 U. S. 58, 89; *Vance* v. *W. A. Vandercook Co.*, 170 U. S. 468, 472; *North American Co.* v. *Morrison*, 178 U. S. 262, 267.

The Circuit Court therefore clearly had jurisdiction of this action, and we are brought to the consideration of the other objections presented by the demurrer to the complaint.

The objection that the only remedy in that court was by suit for a penalty under section 2008 of the Revised Statutes is answered by the repeal of that section, before this action was brought, by the act of Congress of February 8, 1894, c. 25. 28 Stat. 36.

But the objection that the complaint failed to state that the plaintiff was a duly registered voter of the State of South Carolina (which was the ground of the judgment below in favor of the defendants) is a more serious one.

By the constitution of South Carolina, every male citizen, of the age of twenty one years and upwards, who has resided in the State for one year, and in the county where he offers to vote for sixty days, next preceding any election, and is not disqualified by the Constitution of the United States, nor a lunatic or a prisoner, nor been convicted of an infamous crime or of duelling, is entitled to vote for all officers elected by the people. Art. 1, § 31; art. 8, §§ 2, 8. That constitution, in art. 8, § 3, also makes it the duty of the legislature to provide from time to time for the registration of all electors.

The Revised Statutes of South Carolina of 1893 provide, in § 131, that every man, not laboring under the disabilities named in the constitution

of the State (repeating all the qualifications and the disabilities mentioned in that constitution) shall be entitled to vote; and further provide, in § 132, that all electors of the State shall be registered, and that no person shall be allowed to vote at any election unless theretofore registered as required by those statutes or by previous laws.

The constitution and the laws of the State thus require that, in order to entitle any one to have his vote received at any election, he must not only have the requisite qualifications of an elector, but he must have been registered. By elementary rules of pleading, both these essential requisites must be distinctly alleged by the plaintiff in any action against the managers of an election for refusing his vote. *Murphy* v. *Ramsey*, 114 U. S. 15, 37; *Blanchard* v. *Stearns*, 5 Met. 298, 302.

The complaint in this case alleges that the plaintiff was a duly qualified elector; but it contains no allegation that he was ever registered as such. Because of this omission, the complaint does not state facts sufficient to constitute a cause of action.

It was argued, in behalf of the plaintiff, that the registration act of South Carolina was unconstitutional, because it allowed for registration only one day in each month between the day of a general election in November and the first day of July before the next general election; required the registration books to be closed from such first day of July for four months, until the ensuing election day; and thus in effect required each voter to reside in the county for one hundred and twenty days (whereas the constitution required only sixty days) before the election, and otherwise unreasonably impeded the exercise of the constitutional right of voting; that the only exception allowed was in the case of voters coming of age during those four months, and there was no exception in the case of electors who, by reason of sickness or absence or other good and sufficient cause, did not or could not have registered before the first day of July.

In the case in the Supreme Court of South Carolina of *Butler* v. *Ellerbe*, 44 So. Car. 256, cited at the bar, the Chief Justice expressed his opinion that the registration act of the State was unconstitutional; but the majority of the judges declined to express any opinion upon that question, because they thought it unnecessary for the decision. Nor should this court undertake to decide it in the present case.

Passing by the difficulty of subjecting election officers to an action for damages for refusing a vote which the statute under which they are appointed forbids them to receive, it is by no means clear, taking into consideration all the constitutional and statutory provisions upon the subject, that the construction contended for is the true construction of the statute.

But, even upon that construction, the plaintiff does not show that he is in a position to impugn the constitutionality of the statute. It is only on

the day when his vote was refused, that he alleges that he had resided in the State for a year and in the county for sixty days, and was of age and otherwise a qualified elector. He does not allege when he first became qualified. So far as appears, he may have become of age and otherwise qualified but a few days before the election day on which he tendered his vote, in which case he would confessedly, by the specific provision of § 141, have been entitled to apply for registration. Yet he does not allege that he ever was registered, or made any application to be registered.

The provisions of the statutes of 1893 requiring registered voters to obtain certificates from the supervisors, the provisions for registration in earlier statutes, and the provisions of the statute of December 24, 1894, for calling a constitutional convention, enacted since the date of the election here in question, were largely commented on, and their validity impugned, in the argument for the plaintiff in error. But the validity of none of those provisions is involved in the decision of this case.

Judgment affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.